

### OPINION

day in its entirety.

Stuart D. Kaplow, Esquire, proffered to the Board on behalf of his clients, Dr. and Mrs. Mark S. Blank, as to the contemplated use of the property and as to the reasons the Zoning Commissioner's restrictions would prove to be an insurmountable difficulty with which to operate a dental practice. It should be noted that Dr. Blank was not present at the hearing and Mr. Kaplow explained that an unknown emergency arose which made it impossible for Dr. Blank to appear this date. After People's Counsel had been advised of this situation, the proffer was accepted by this Board. The proffer further indicated that the building was purchased in 1989 and sits on .37 acre located on Reisterstown Road in a commercial transition zone. Commercial uses exist on both sides of the property as well as across the street. A residence exists to the rear of the site.

**ORDER RECEIVED, FOR FILING**

Testimony indicated that Mr. Blank is currently operating a dental office in Laurel and is desirous of relocating his office to the subject building, which is located on the R.O. zoned portion of the property. The Petitioners purchased the property in 1988 prior to and unaware of the impending change to the R.O. regulations that would restrict the area available to support his dental practice to 25% of the gross floor area. Testimony and evidence established that the adjoining properties on Reisterstown Road are utilized as office buildings and Petitioner testified he knows of no opposition to the relief requested.

Mr. Rosenfelt testified by way of proffer that in his opinion, the relief requested in the special hearing may be granted by the Zoning Commissioner as the relief sought is an area variance and is clearly within the spirit and intent of Section 307.1 of the B.C.Z.R. He also stated that the subject property was no longer suitable for residential use as the surrounding community has largely converted to commercial uses. Mr. Rosenfelt's testimony also indicated that the Petitioners would suffer an undue hardship and practical difficulty should the requested variance be denied.

The Petitioners' variance request requires, as a preliminary matter, a determination as to whether the Zoning Commissioner has the authority to consider Petitions for Variances from Section 203.3.A.2 of the B.C.Z.R. Section 203.3 reads in part as follows:

203.3 -- Use Regulations:

- 2-

**ORDER**

ORDER RECEIVED FOR FILING

Date 10/5/89  
by Bette Schulman

- 3 -

\_\_\_\_\_  
 Harry E. Buchheister, Jr.  
 \_\_\_\_\_  
 \_\_\_\_\_  
 Michael B. Sauer

ORDER RECEIVED FOR FILING

Date 1/05/99  
By Bob Schuman

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

Testimony indicated that the subject property, known as 11719 Reisterstown Road, consists of 0.32 acres split zoned R.O. and D.R. 3.5 and is improved with a two-story Class A office building. The Petitioners, Mark S. Blank, D.D.S., and his wife, Carol B. Blank, seek a variance from Section 203.3.A.2 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit 100% of the adjusted gross floor area of the subject property to be occupied by Mr. Blank's dental office in lieu of the permitted 25%. Petitioners have also petitioned for a special hearing under Section 500.7 to

ORDERED FOR FILING

Date 1/15/89  
By Fette Schukman

Section 307 empowers the Zoning Commissioner and the County Board of Appeals to hear Petitions requesting variances from height and area regulations, off-street parking regulations, and from sign regulations. Only the restrictions and residential transition areas, as addressed in Bill No. 124, 1981, are specifically denied the right to Petition for a Variance under Section 307.

In consideration of the above, the regulatory history and the testimony and evidence presented at the hearing, it is the opinion of the Zoning Commissioner that the 25% adjusted gross floor area requirement of Section 203.3.A.2 of the B.C.Z.R. is an area regulation, and therefore, the Petition for Special Hearing should be granted.

Petitioners have also requested a variance from Section 203.3.A.2 to permit the use of 100% of the adjusted gross floor area of the subject building to be occupied by Petitioner's dental practice.

An area variance may be granted where strict application of the zoning regulations would cause practical difficulty to the Petitioner and his property. McLean v. Soley, 270 Md. 208 (1973). To prove practical difficulty for an area variance, the Petitioner must meet the following:

- 1) whether strict compliance with requirement would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome;
- 2) whether the grant would do substantial injustice to applicant as well as other property owners in the district or whether a lesser relaxation than that applied for would give substantial relief; and
- 3) whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

ORDER RECEIVED FOR FILING

Date 10/25/89  
By Kottel & Kuhlmann



Blank Property  
Page 2  
May 11, 1989

STORM DRAINS AND SEDIMENT CONTROL COMMENTS: (Con't)

Onsite drainage facilities serving only areas within the site are considered private. Therefore, construction and maintenance shall be the Developer's responsibility. However, a drainage area map, scale 1" = 200', including all facilities and drainage areas involved, shall be shown on a plan and submitted to Baltimore County for review.

The Developer must provide necessary drainage facilities (temporary or permanent) to prevent creating any nuisances or damages to adjacent properties, especially by the concentration of surface waters. Correction of any problem which may result, due to improper grading or improper installation of drainage facilities, would be the full responsibility of the Developer.

Development of this property through stripping, grading and stabilization could result in a sediment pollution problem, damaging private and public holdings downstream of the property. A grading permit is, therefore, necessary for all grading, including the stripping of top soil.

WATER AND SANITARY SEWER COMMENTS:

Permission to obtain a metered connection from the existing main may be obtained from the Department of Permits and Licenses.

The Developer is responsible for the cost of capping or plugging any existing house connection not used to serve the proposed site.

The Developer will be given credit for one System Connection Charge for each existing house which is now connected into the public services.

Permission to connect to, or (to connect additional sanitary fixtures to) the existing public sanitary sewer may be obtained from the Department of Permits and Licenses.

The total Water and/or Sanitary Sewer System Connection Charge is determined, and payable, upon application for the Plumbing Permit. This Charge is in addition to the normal front foot assessment and permit charges.

This property is subject to Water and/or Sewer System Connection Charges based on the size of water meters utilized in accordance with current County Policy.

SIGNED: ROBERT W BOWLING

Robert W. Bowling, P.E., Chief  
Developers Engineering Division

RWB:pab

cc: File

BLANK/TXTCOMM2

Baltimore County  
Fire Department  
800 York Road  
Towson, Maryland 21204-2586  
(301) 887-4500

Paul H. Reincke  
Chief

J. Robert Haines  
Zoning Commissioner  
Office of Planning and Zoning  
Baltimore County Office Building  
Towson, MD 21204



Dennis F. Rasmussen  
County Executive

RE: Property Owner: Mark S. Blank, et ux

Location: NE/S Reisterstown Road, 103.34' NW of centerline of Austin Road

Item No.: 438 Zoning Agenda: April 25, 1989

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code", 1988 edition prior to occupancy.

REVIEWER: *John Kelly* 4-25-89  
Planning Group  
Special Inspection Division

Noted and  
Approved

*Capt. Wm F. Brady*  
Fire Prevention Bureau

APR 28 1989



Maryland Department of Transportation  
State Highway Administration

Richard H. Trainor  
Secretary  
Hal Kassoff  
Administrator

June 12, 1989

Mr. J. Robert Haines  
Zoning Commissioner  
County Office Building  
Towson, Maryland 21204

Attn: Mr. James Dyer

Re: Baltimore County  
Mark S. Blank Property  
Zoning Meeting of 4-25-89  
NE/S Reisterstown Road  
(MD 140) 103.34' West of Austin Road  
(Item #438)

Dear Mr. Haines:

After reviewing the submittal for a Special Hearing to permit no more than 25 percent of the total adjusted gross floor area of an office building located in an R.O. Zone, we find the plan acceptable.

If you have any questions, please contact Larry Brocato at 333-1350.

Very truly yours,

*Michael S. Mills, Jr.*  
Michael S. Mills, Jr., Chief  
Engineering Access Permits  
Division

LB:maw

cc: Rosenfelt & Woolfolk, Inc.  
Mr. J. Ogle

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JUN 15 1989

ZONING OFFICE

My telephone number is (301) 333-1350

Teletypewriter for Impaired Hearing or Speech  
383-7555 Baltimore Metro - 585-0451 D.C. Metro - 1-800-492-5082 Statewide Toll Free  
707 North Calvert St., Baltimore, Maryland 21203-0717

Baltimore County  
Department of Public Works  
Bureau of Traffic Engineering  
Courts Building, Suite 406  
Towson, Maryland 21204  
(301) 887-3554

April 25, 1989



Dennis F. Rasmussen  
County Executive

Mr. J. Robert Haines  
Zoning Commissioner  
County Office Building  
Towson, MD 21204

Dear Mr. Haines

The Bureau of Traffic Engineering has no comments for items number 424, 425, 426, 427, 428, 429, 430, 431, 432, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, and 448.

Very truly yours,

*Michael S. Flanigan*  
Michael S. Flanigan  
Traffic Engineer Assoc. II

MSF/lab

RECEIVED  
APR 28 1989

ZONING OFFICE

## site data

- Gross acreage: 0.32 AC  
Net acreage: 0.30 AC
- Zoning: R.O. = 0.24 AC  
DR 3.5 = 0.08 AC
- Deed reference: 0000-04
- Parking required:  
First floor:  
Use: Dental Office  
Floor area: 924 SF  
4.5 Parking spaces per 1000 SF - 5 SPACES  
Basement (unfinished)  
Use: Storage  
Floor area: 903 SF  
No parking required  
Attic: LESS THAN 7' HEADROOM  
Use: UNINHABITABLE  
Floor area:  
No parking required  
Parking provided: 6 SPACES (2 employees)
- Total disturbed area is less than 5000 SF. A Stormwater Management Exemption is being applied for.
- Topography and property line shown hereon is per a survey by APR Associates, Inc., February 10, 1989.
- A copy of the plan has been submitted to Larry Brocato of the Maryland State Highway Administration.
- The proposed ramp will slope at 8.33% maximum and will have handrails to meet Maryland Code.
- Census Tract 4045
- Watershed 27
- Subwatershed G7
- Estimated ADT's (75/1000 SF) = 70 ADT

GEORGE E. LIESKE & WIFE  
4452-52A/CH. MICHAEL PLAT  
ZONED D.P. 3.5  
2 VIRGINIA AVENUE  
CURRENT USE: RESIDENTIAL

N/F WILLIAM HUNDELT & WIFE  
7762-610/55 VIRGINIA AVENUE  
ZONED: D.P. 3.5  
7 VIRGINIA AVENUE  
CURRENT USE: RESIDENTIAL

N/F HARRY WEGULF & WIFE  
2764-178/SLADE PROPERTY  
ZONED: D.P. 3.5  
4 AUSTIN ROAD  
CURRENT USE: RESIDENTIAL

## Principal Buildings within 200'

- OFFICE
- COMMERCIAL
- RESIDENTIAL

## benchmark:

BM NO. 14739 ELEV. 638.927  
RM SPIKE IN MAGADAM ON S.W. SIDE OF REISTERSTOWN  
ROAD S.N.W. SIDE OF CHESTNUT HILL LANE.

## notes:

FLOOR AREA RATIO:  $(924 + 13926.31) / 1 = 0.07$   
THERE ARE NO STREAMS ON OR WITHIN 50' OF THE PROPERTY.

## property information:

AREA: 11926.31 SQ. FT. / 0.32 ACRES TOTAL  
ZONING: R.O. = 0.24 acres / dr. 3.5 = 0.08 ac.  
Lot 15, c.d. Michael subdivision, d.d. 1477-413

## purpose of variance:

A VARIANCE FROM SECTION 203.3.A.2 TO PERMIT 100% OF THE TOTAL ADJUSTED GROSS FLOOR AREA OF THE OFFICE BUILDING TO BE OCCUPIED BY DENTAL OFFICES.

## crg waiver:

THE APPLICANT HAS APPLIED FOR WAIVER OF THE CRG PLAN & PROCESS BASED ON THE MINOR SCOPE OF THE DEVELOPMENT.

**PETITIONER'S  
EXHIBIT 2.**

**VARIANCE PLAN  
BLANK PROPERTY**  
11719 REISTERSTOWN ROAD  
4th ELECTION DISTRICT  
BALTIMORE COUNTY, MARYLAND

REVISIONS: 4/14/89  
SCALE: 1" = 20'  
DATE: MAR 15 1989  
JOB NO.: 208/001  
DESIGNED: JE  
DRAWN: W.T. CEVIS  
CHECKED:

**ROSENFELT & WOOLFOLK**  
INCORPORATED  
civil engineers • site designers • land planners  
water quality and stormwater management consultants  
Suite Eight  
Owings Mills Professional Center  
10706 Reisterstown Road  
Owings Mills, MD 21117  
Telephone: (301) 356-4600

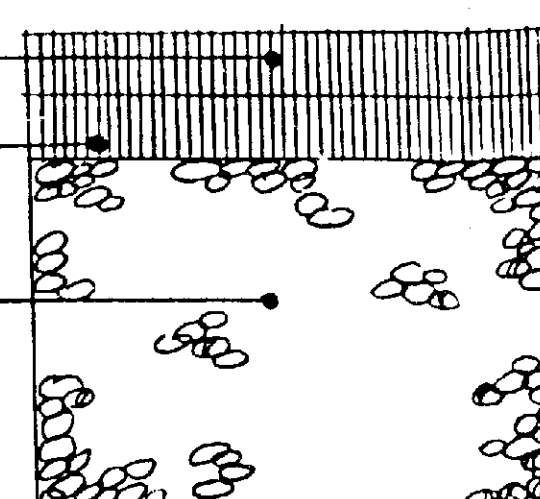
DRAWING NUMBER:  
SHEET 1 OF 3

## bituminous concrete paving

NOT TO SCALE

1 1/2" BITUMINOUS CONCRETE  
DAND SN  
1 1/2" BITUMINOUS CONCRETE  
DAND SN

8" CR-6 BASE COURSE  
PLACED IN TWO 4" LIFTS



TACO BELL RESTAURANT  
ZONED BL

## owner/developer:

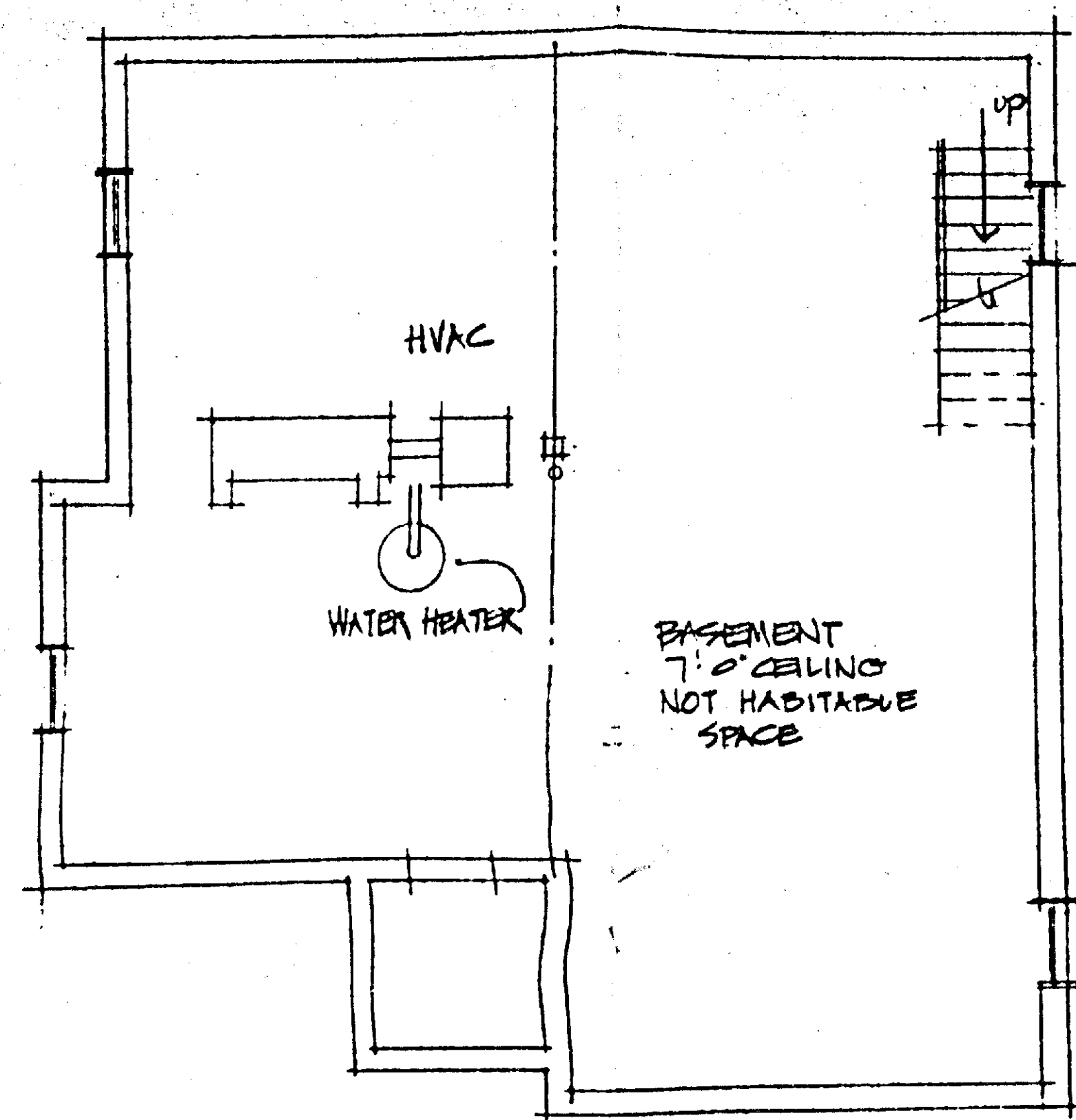
MARK S. & CAROL B. BLANK  
4012 LONGLAKE DRIVE  
OWINGS MILLS, MARYLAND

## building type

CLASS A

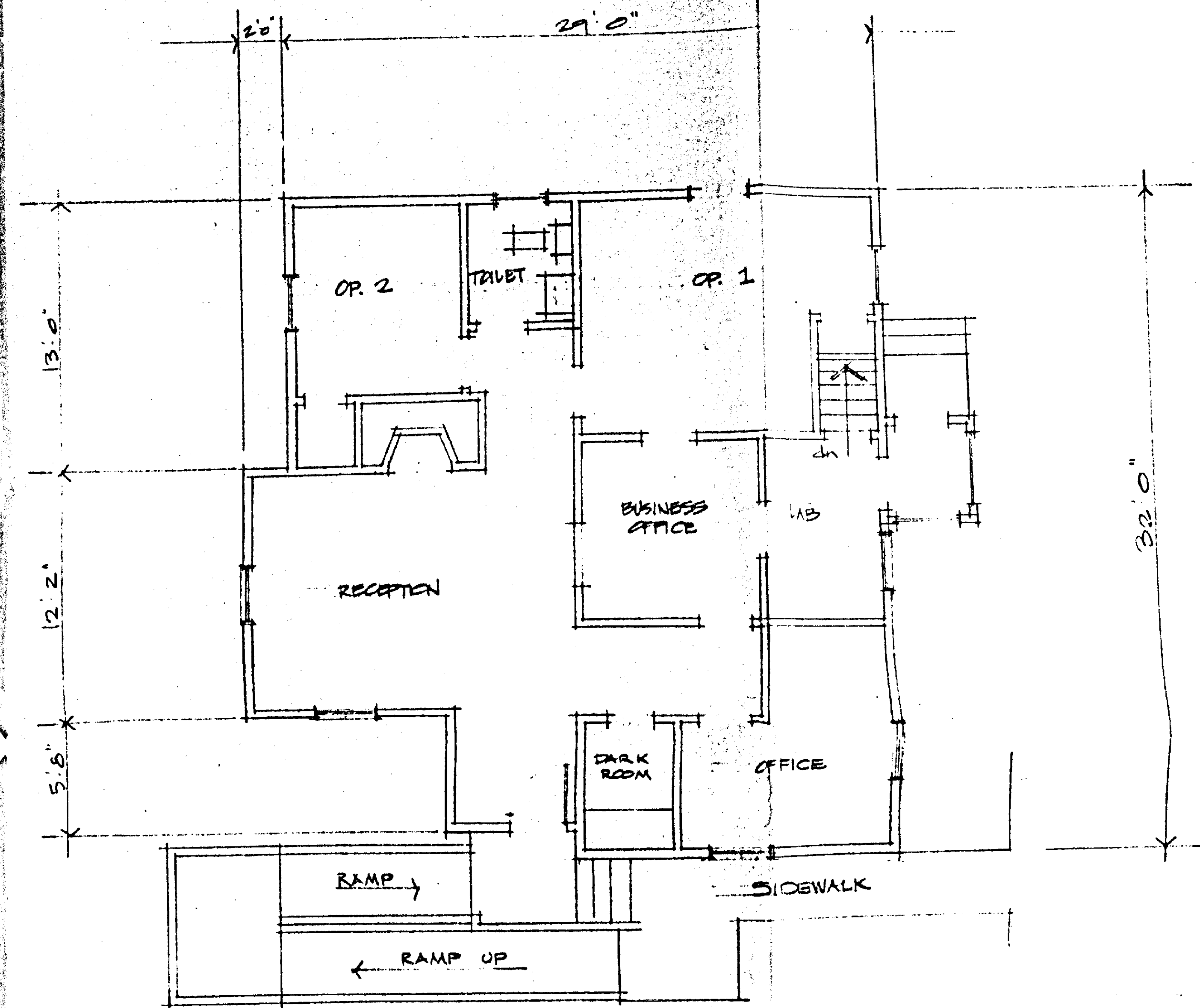
APPELLANTS #1





BASEMENT PLAN scale 1/4"=1'0"  
 PROPOSED USE : 100% storage

note: dwelling has not been enlarged by 10%  
 or more within 5 years prior to application



FIRST FLOOR PLAN scale 1/4"=1'0"  
 PROPOSED USE : 100% medical offices

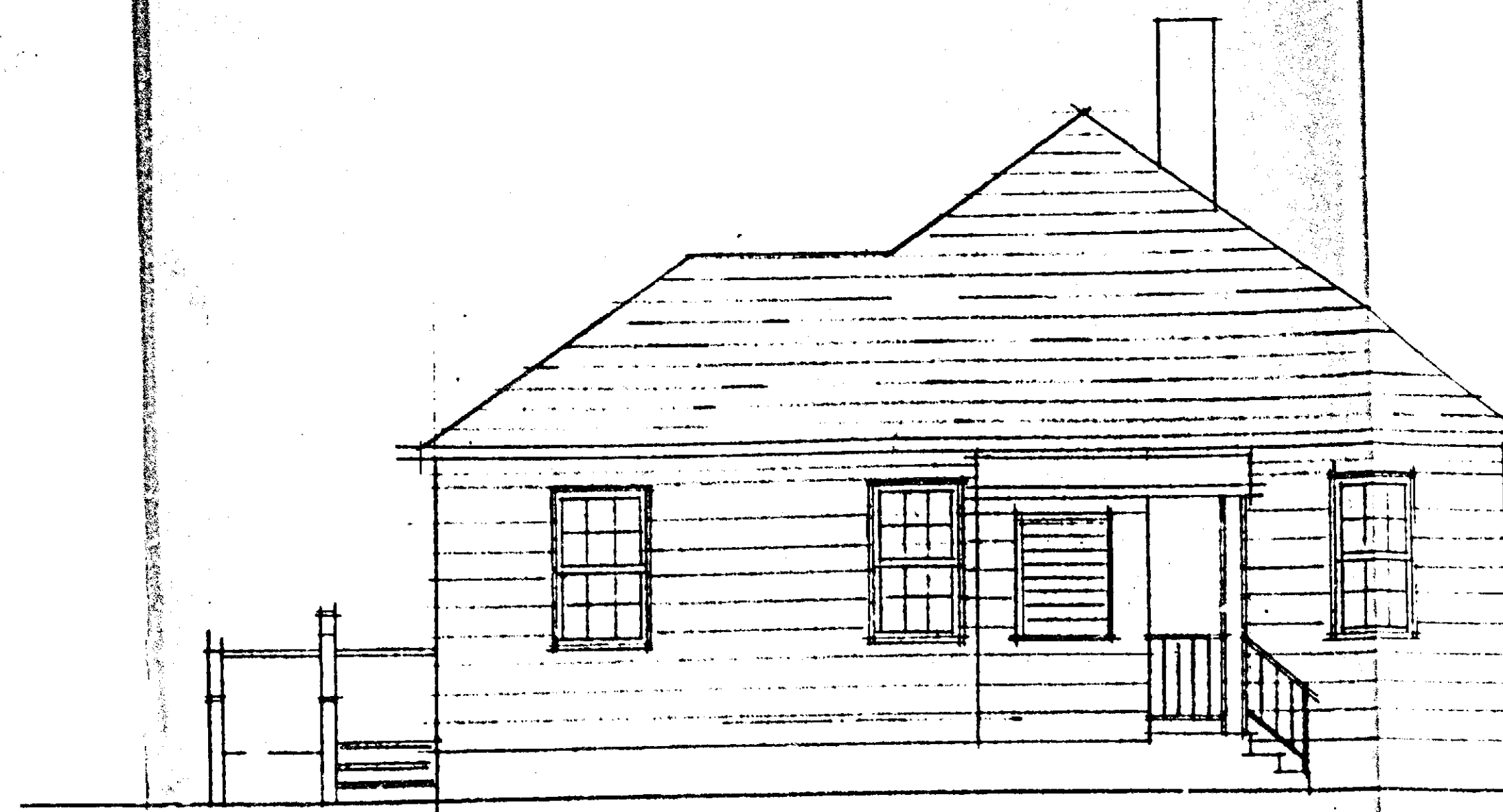
**PETITIONER'S  
 EXHIBIT 2**

**VARIANCE PLAN**

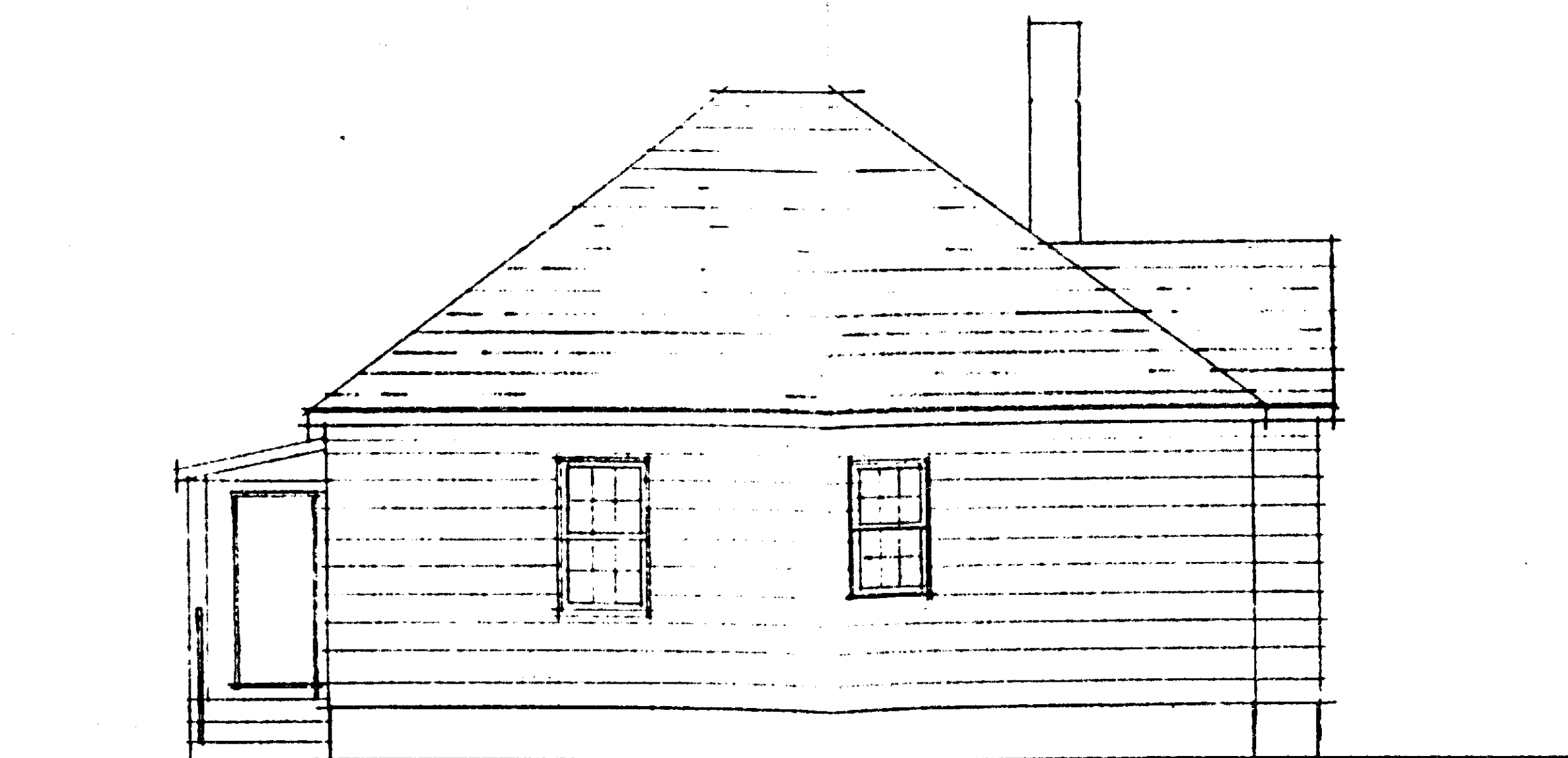
BLANK PROPERTY	
11719 REISTERSTOWN RD	
PROPOSED DENTIST OFFICE	
Stan Ryder Jr. & Associates Architects 8306 Liberty Road • Baltimore, MD 21207 (301) 321-2367	AIA Fax (301) 321-2464
APRIL 14, 1997	
A1	



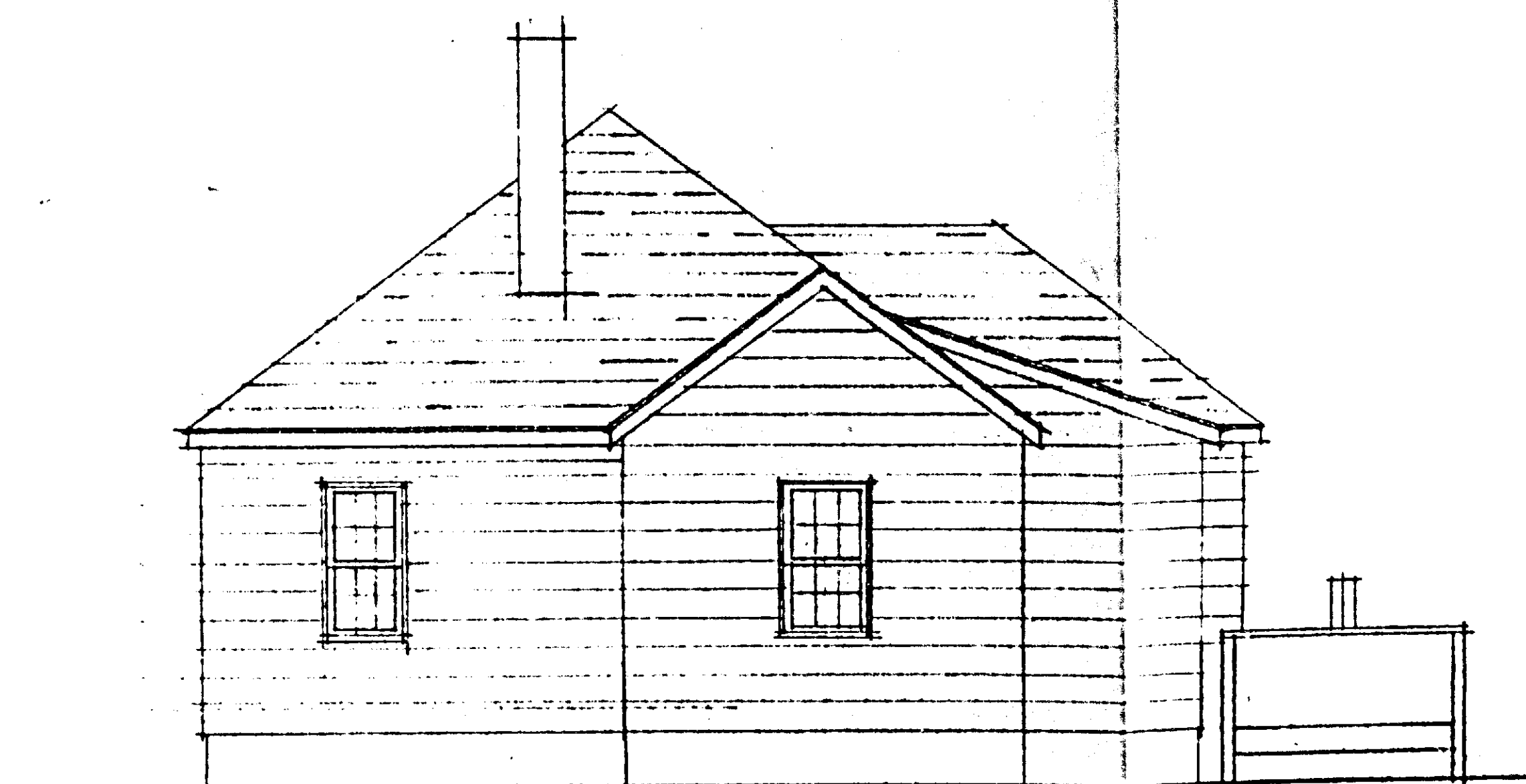
FRONT ELEVATION - REISTERSTOWN ROAD SCALE 1/4"=1'-0"  
south



RIGHT SIDE ELEVATION SCALE 1/4"=1'-0"  
east



REAR ELEVATION  
north



LEFT SIDE ELEVATION  
west

PETITIONER'S  
EXHIBIT 4

# VARIANCE PLAN

BLANK PROPERTY  
11719 REISTERSTOWN RD  
PROPOSED DENTAL OFFICE

Stan Ryder Jr. & Associates  
Architects AIA  
8308 Liberty Road • Baltimore, MD 21207  
(301) 521-2367 Fax (301) 521-2464

APR 16 11 1989

AS







law, the phrase included height and density regulations, which were not controlled, except incidentally, by the original area districts. Michie, American Land Planning Law § 135.03 n.15 (1981).

The language most often cited with respect to the distinction between area and use variances is that of the Nebraska Supreme Court in Alumni Control Bd. v. Lincoln, 137 N.W.2d 800 (Neb. 1965). The court described the difference between a use and an area variance, and noted the practical significance of the distinction. The court stated:

A use variance is one which permits a use other than that prescribed by the zoning ordinance in a particular district. An area variance has no relationship to a change of use. It is primarily a grant to erect, alter, or use a structure for a permitted use in a manner other than that prescribed by the restrictions of the zoning ordinances.

Alumni Control Bd., 137 N.W.2d at 802, cited with approval in 3 Anderson, American Law of Zoning § 20.07 (3d ed. 1986); 82 Am. Jur. 2d Zoning & Planning § 256 (1976); 101A C.J.S. Zoning & Land Planning § 229 (1965).

A further distinction is noted in 6 Rohand, Zoning and Land Use Controls § 43.01(2) (1984):

A use variance allows a landowner to use existing property in a manner not permitted by the ordinance and inconsistent with uses in the surrounding area. An example of a use variance is a commercial establishment, such as a nursery or garage, in a residential zone.

An area variance (also known as a bulk, dimensional, construction or non-use variance) authorizes deviations from restrictions upon the construction and placement of buildings and other structures. Specifically, this device allows modification of area, yard, height, floor space, frontage, density, set back, and similar restrictions. An example of an area variance is where a building is constructed with floor area in excess of the limit prescribed in the ordinance.

Quoted in City of Olathe v. Board of Zoning Appeals, 696 P.2d 409 (Kan. App. 1985) (emphasis added).

Moreover, the courts have distinguished between a use variance and an area variance, by stating that a use variance is one which permits a use of land other than that which is prescribed by the zoning regulations. For example, a variance which permits an office or commercial use in a residential district, or which permits a multiple dwelling in a district zoned for single-family dwellings, or permits an industrial use in a district limited to commercial uses is a use variance. 3 Anderson, American Law of Zoning § 20.06 (3d ed. 1986).

On the other hand, an area variance is one which does not involve a use which is prohibited by the zoning regulations. Rather, area variances involve such matters as set back lines, height restrictions, lot-size, area restrictions, and the like. In other words, the term area variance is a shorthand description of a variance from structural or area restrictions. 82 Am. Jur. 2d Zoning and Planning § 256 (1976).

#### The Maryland Courts

A use variance is distinguishable from an area variance in that the use variance changes the character of the zoned district while the area variance does not. Loyola Loan Ass'n v. Buschman, 227 Md. 243, 249 (1961). Doctor Blank's office, to be located on Reisterstown Road in an area stripped with commercial and office uses, will not change the character of the RO zoned district. The proposed variance is an area variance in that it does not change the character of the property, does not affect the use of the land, and does not threaten the neighborhood or adjacent landowners with an incompatible use of the property. The adjacent uses are office uses and, in fact, one of those is a dental laboratory - certainly compatible with the proposed dental office.

As the Maryland Court of Special Appeals stated, "it is generally agreed that the impact of an area variance is much less drastic than that of a use variance." Anderson v. Board of Appeals, 22 Md. App. 28, 39 (1974). The court in Anderson stated that Maryland recognizes a distinction between a use variance, which changes the character of the zoned district, and an area variance, which does not. Id. at 38. As noted above, the proposed variance does not affect the office use of the property nor does it result in a change in the office character of the converted dwelling or of the RO zoned district. The variance only allows a deviation in the percentage of the existing building that may be occupied as a dental office versus some other type of office.

#### Baltimore County

The Circuit Court of Maryland for Baltimore County and County Board of Appeals have held both that variances can be granted under § 203.3 and rejected the idea that § 203.3 variances were necessarily use variances because of the subsection heading that reads, "203.3--Use Regulations."

The Circuit Court for Baltimore County in the case of Balint v. County Board of Appeals of Baltimore County, Case No. 82-M-201 (December 5, 1984), held that a variance could be granted from § 203.3.C sign requirements for RO zones. The court upheld the Board of Appeals finding in a Special Hearing, on another subsection of the same Section at issue here, that it did have the power to grant a variance to these regulations.

The Peoples Counsel contended that § 203.3--Use Regulations of the BCZR precluded the Board from entertaining requests for variance for signs not specifically allowed in Section 203.3.C. The Board rejected the position of the Peoples Counsel "because to so hold would mean that such requests would by their very nature be use variances as opposed to area variances. The Board is of the opinion that requests for variances concerning the size of signs could be classified as area variances".

In Re Petition for Variance, Howard Grossfield, et al., Board of Appeals of Baltimore County, Case No. 83-10-ASPH, and 82-189-V, (April 26, 1984), page 1, in rejecting the Peoples Counsel argument, the Board clearly held that variances

petitioned under § 203.3--"Use Regulations", can be considered area variances. The Circuit Court agreed and stated that this decision is consistent with BCZR § 307 which allows variances from regulations in all zones when strict compliance with the Regulations would result in practical difficulties or unreasonable hardship. Id. at 3.

The case at hand also involves a variance request under Section 203.3. The variance requested, as was the request in the Balint case, is not a request to vary the use of the property, but to vary the size and amount of a permitted use. The variance request in the Balint case was subsequently denied by the Circuit Court on the grounds that the petitioner did not meet the practical difficulty or unreasonable hardship standard. Balint, 82-M-201 at 3-4. Here the Petitioner has clearly demonstrated practical difficulties and undue hardship.

A subsequent case before the Board of Appeals again specifically addressed the question of whether or not a variance may be petitioned for under § 203.3--Use Regulations for property zoned RO. In the Matter of Emanuel S. Glasser, M.D., No. 85-282-XA, (October 9, 1985) the Board of Appeals faced an appeal from the Peoples Counsel, once again challenging the right to petition for a variance to RO sign regulations under § 203.3. The Board in its opinion and order made clear that the authority of the Zoning Commissioner to grant variances under § 307 of the BCZR extends to RO zoning classifications. In keeping with the Balint case, the language

of the Board in Glasser is quite emphatic in rejecting a narrow interpretation of the authority to consider variances to RO regulations under § 307. In applying § 307 variances to § 203.3 on the issue of whether or not a variance could be applied for in property zoned RO, the Board stated:

"The Board will also note that in §1801.1.B.1.b.7 the County Council, by Bill #124, 1981 legislated that §307 was not applicable to the requirements of this subsection. No such legislation has been afforded the R-O zoning classification. §307 empowers the Zoning Commissioner and the County Board of Appeals to hear petitions requesting variances from height and area regulations, off-street parking regulations and from sign regulations. Only the restrictions in residential transit' on areas, as addressed in Bill #124, 1981, are specifically denied the right to petition for a variance under §307.

... it is the opinion of this Board that the right to petition for a variance in the R-O zone should not be denied and will be order. ... ORDERED that the right to petition for variances as defined in §307 of the BCZR be afforded the R-O zoning classification." Glasser, 85-282-XA at 2-3.

The cases above provide clear precedent that petitions for variances to the regulations under § 203.3--Use Regulations need not be construed as use variances, but can be granted as variances from height, area, offstreet parking and sign regulations as provided for under § 307 of the BCZR. It plainly follows that a variance to an area regulation, as is the new subsection restricting medical offices to 25% of the Adjusted Gross Floor Area, can be granted. Under the broad language in Glasser, the latest decision on this subject, the Board did

not limit its finding to sign regulations but to regulations covering the RO zoning classification. Again, the order stated, "ORDERED that the right to petition for variances as defined in § 307 of the BCZR be afforded the R-O zoning classification". Glasser 85-282-XA at 3.

The Planning Board report of October 16, 1986 concerning the legislation that evolved into Bill No. 37-88, that enacted the regulation in question, is silent as to the issue of the granting of variances and, in fact, the report does not even make mention of the floor area limitation. However, the Planning Board unanimously voted to recommend to the Director of the Office of Planning and Zoning, a Waiver of C.R.G. supporting Doctor Blank's plan to permit 100% of the floor area to be occupied by dental offices.

Arnold Jablon, County Attorney and former Zoning Commissioner confirmed, in a conversation with Counsel, that prior to enactment he informed Barbara Bachur, the sponsor of the legislation establishing the regulation in question, that the floor area limitation, as an area regulation, could be variances. This opinion is again made clear in the June 10, 1988 Memorandum from the County Attorney the Councilman William R. Evans, (Petitioner's Exhibit #1) which states in relevant part:

It is my opinion that a request for variance to the 25% limitation could be made and that

it would be treated as an area variance and not as a use variance.<sup>1</sup>

A plain reading of the regulation concerning "adjusted gross floor area" must determine it to be an "area regulation" for the purpose of § 307 and it is indeed within the authority of the Zoning Commissioner to consider variances to § 203.3.a.2 of the Baltimore County Zoning Regulations.

STRICT COMPLIANCE WITH THE BCZR WOULD RESULT IN PRACTICAL DIFFICULTY SUCH THAT A VARIANCE MUST BE GRANTED AS AUTHORIZED BY § 307.

The Zoning Commissioner has the power to grant the requested variance. Such power is consistent with the Baltimore County Zoning Regulations Section 307 which allows variances from area regulations in all zones when strict compliance with the BCZR would result in practical difficulties or unreasonable hardship. The testimony made clear that practical difficulties exist. In McLean v. Soley, 270 Md. 268, 214, 310 A.2d 783 (1973) the Court of Appeals defined the standard of "practical difficulty" under Section 307:

1. Whether compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.

<sup>1</sup>The Memorandum of June 10, 1988 can not be looked to for legislative history, as a factual investigation by Counsel subsequent to the hearing of July 13, 1989, makes clear that Bill No. 37-88 was passed for that reader on April 18, 1988. The memorandum was apparently written to clarify the issue for a constituent of Councilman Evans during the 1988 Comprehensive Rezoning Process.



2. Whether a grant of the Variance applied for would do substantial justice to the applicant as well as other property owners in the district or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.

3. Whether relief can be granted in such fashion that the spirit of the Ordinance will be observed and public safety and welfare secured.

The first criteria, concerning the use of the property, is whether compliance with the Regulation would prevent the owner from using the property for a permitted use or would render conformity with such restrictions unnecessarily burdensome. Doctor Blank purchased the property with plans to locate his dental office in the building that, as fronting on a commercial section of Reisterstown Road, is no longer suitable for residential use. The Petitioner testified that a dental office, a permitted use, could not practically function in 25% of the gross floor area of the building. In describing the floor plan of the building, as depicted on page 2 of the variance Plan, (Petitioner's Exhibit 3), the existing Class A office building has exterior dimensions of only 29 feet by 32 feet. With the need for a dark room, laboratory area, not to mention patient reception area and office space to accompany the patient operating rooms, this modest dental office is already pressed for space. Mr. Rosenfelt further testified that it was for all practical purposes not possible to locate a

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dental office in less than 100% of the first floor area of of the building.

In addition to being unreasonably prevented from using his property as a dental office, conformity with the restriction in question is unnecessarily burdensome. The issues of compatibility and vehicular congestion and parking that gave rise to the several recent changes to the RO regulations and the enactment of the Section in question are all but non-issues with respect to the subject site. Vehicular congestion is a non-issue because the average daily trips expected to be generated from the site will have a minimal, if noticeable at all, affect on traffic on Reisterstown Road.

As the first page of the Variance Plan (Petitioners Exhibit 2) depicts, the parking is sensitively placed such that it is all located within the RO zoned portion of the property and does not intrude on the residentially zoned portion of the site. An additional parking space, beyond what is required, has been provided. While the adjoining uses along Reisterstown Road are office and commercial, the residential property that abuts the site, to the rear, is carefully screened and the proposed use of railroad ties, within the landscape plan, will maintain the 'aesthetic ambience' of the residentially zoned property and will further not only screen vehicular activity, but also serve to block light emitted from automobile headlights. The nature of the re-use of the converted house without exterior modifications, as located along Reisterstown

- 13 -

Road and sensitivity to the vehicular issues in laying out the parking and landscaping, address both the Council's concerns with respect to compatibility and vehicular issues. Strict compliance with Section 203.3.a.2 is unnecessarily burdensome on Doctor Blank and his wife.

The second prong of the practical difficulty test has two parts. The first part is whether the variance would do substantial justice to the applicant as well as to other property owners in the district. The subject property is zoned RO in recognition of its location between a residential and non-residential area. Due to the transitional nature of RO zones, the restriction is designed to be in keeping with the residential elements of the surrounding areas. To that end Doctor Blank determined to convert the then existing dwelling to a Class A office building. It is reasonable in such a zone, abutted by residential uses, to impose some moderation on office use, including restrictions on the type of office. However, in the case at bar, the deviation from the 25% medical limitation is consistent with the character of the other property owners in the RO district. In fact, both the adjoining properties to the north and south of the subject site, are converted Class A office buildings.

The second part of the second prong of the practical difficulties test is whether a lesser relaxation would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners. As testimony indicated and is clear from a review of the floor

- 14 -

plan of the building, a lesser relaxation is not a workable solution. The proposed dental offices are all but already cramped in Doctor Blank's building. It would not be possible for the dentist to occupy only 25% of the floor area. The need sufficient to justify this variance is substantial and urgent.

The third criteria is whether relief can be granted in such fashion that spirit of the Ordinance will be observed and public safety and welfare secured. The spirit of the Ordinance is to promote land use by allowing certain houses to be converted to office buildings. As noted above, while a restriction on floor area for certain office types may be a reasonable means of maintaining compatibility with nearby residential areas in certain situations, such is not the case with the Blank site. Doctor Blank's property fronts along a major arterial and is abutted on two sides by office uses. By limiting parking to the RO zones portion of the property and through landscape treatment, Doctor Blank's Class A office building will be in keeping with the residential elements of the surrounding area. Public safety and welfare are both secured on the granting of the variance requested.

#### CONCLUSION

The Zoning Commissioner has the authority to grant the requested variance. Upon a review of a testimony, the Zoning Commissioner can only find that strict compliance with the Regulations would result in practical difficulty or undue

- 15 -

hardship as required by Section 307. THE VARIANCE MUST BE GRANTED!

Respectfully Submitted,

*Stuart D. Kaplow*  
Stuart D. Kaplow  
Frank, Bernstein, Conaway & Goldman  
300 East Lombard Street  
Baltimore, Maryland 21202  
(301) 625-3775

#### Certificate of Service

I HEREBY CERTIFY that on this 24 day of July, 1989, a copy of the foregoing Memorandum was mailed, first class mail, to Phyllis C. Friedman, People's Counsel, Room 304, County Office Building, Towson, Maryland 21204.

*Stuart D. Kaplow*  
Stuart D. Kaplow

2894M

- 16 -



#### County Board of Appeals of Baltimore County

COUNTY OFFICE BUILDING  
111 W. CHESAPEAKE AVENUE  
TOWSON, MARYLAND 21204  
(301) 887-3333

HEARING ROOM -  
Room 301, County Office Bldg.

February 7, 1990

#### NOTICE OF ASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH BOARD RULE 2(b). NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE UNLESS IN FULL COMPLIANCE WITH RULE 2(c), COUNTY COUNCIL BILL NO. 59-79.

CASE NO. 89-554-SPHA MARK S. BLANK, ET U., NE/S Reisterstown Rd., 103.34' NW of c/l of Austin Road (11719 Reisterstown Rd.) 4th Election District 3rd Councilmanic District

SPH - to find that Z.C. has authority to approve use of more than 25% total adjusted gross floor/office building in RO zone for medical offices; VAR - 100% of adjusted gross floor area for dental offices in lieu of the allowed 25%.

10/25/89 - Z.C.'s Order GRANTING Petitions with restrictions.

ASSIGNED FOR: TUESDAY, JUNE 12, 1990 at 10:00 a.m.

cc: Mr. and Mrs. Mark S. Blank Petitioners/Appellants  
Stuart D. Kaplow, Esquire Counsel for Petitioners/Appellants  
Robert Rosenfelt People's Counsel for Baltimore County  
P. David Fields J. Robert Haines  
Ann M. Nastarowicz James E. Dyer  
W. Carl Richards, Jr. Docket Clerk - Zoning  
Arnold Jablon, County Attorney LindaLee M. Kuszmaul Legal Secretary

Baltimore County  
Zoning Commissioner  
Office of Planning & Zoning  
Towson, Maryland 21204  
(301) 887-3333  
J. Robert Haines  
Zoning Commissioner

November 27, 1989

Baltimore County Board of Appeals  
County Office Building, Room 315  
Towson, Maryland 21204

RE: Petition for Zoning Variance  
NE/S Reisterstown Road, 103.34' NW of the c/l of Austin Road (11719 Reisterstown Road)  
4th Election District, 3rd Councilmanic District  
MARK S. BLANK, ET UX - Petitioners  
Case No. 89-554-SPHA

Dear Board:

Please be advised that an appeal of the variance portion only was filed in this office on November 21, 1989 by Stuart D. Kaplow, Attorney on behalf of the Petitioners. All materials relative to the case are being forwarded herewith.

Please notify all parties to the case of the date and time of the appeal hearing when it has been scheduled. If you have any questions concerning this matter, please do not hesitate to contact this office.

Very truly yours,

*J. Robert Haines*  
J. ROBERT HAINES  
Zoning Commissioner

JRH:scj

Enclosures

cc: Mark S. & Carol B. Blank  
4012 Longlake Drive, Owings Mills, MD 21117

Stuart D. Kaplow, Frank Bernstein, Conaway & Goldman  
300 East Lombard Street, Baltimore, MD 21202

Robert Rosenfelt, Suite 8 Owings Mills Professional Center  
10706 Reisterstown Road, Owings Mills, MD 21117

People's Counsel, Rm. 304, County Office Bldg., Towson, MD 21204

RECEIVED  
COUNTY BOARD OF APPEALS  
NOV 28 4 19 89

#### LAW OFFICES FRANK, BERNSTEIN, CONAWAY & GOLDMAN

10227 WINCORN CIRCLE  
COLUMBIA, MARYLAND 21044  
(301) 730-9477

300 EAST LOMBARD STREET  
BALTIMORE, MARYLAND 21202  
(301) 625-3800

118 WEST CHURCH STREET  
FREEERICK, MARYLAND 21701  
(301) 483-8335

7758 LEESEBURG PIKE  
TYSONS CORNER, VIRGINIA 22063  
(703) 895-8410

703 555-9676  
TELEPHONE (301) 625-3702  
CABLE: FRANKOP  
TELEX: 87930

6701 DEMOCRACY BOULEVARD  
BETHESDA, MARYLAND 20817  
(301) 897-8287

WRITER'S DIRECT NUMBER  
(301) 625-3775

November 20, 1989

J. Robert Haines, Zoning Commissioner  
Office of Planning and Zoning  
111 W. Chesapeake Avenue  
Towson, MD 21204

Re: PETITION FOR ZONING VARIANCE  
NE/S Reisterstown Road, 103.34' NW of the c/l of Austin Road (11719 Reisterstown Road)  
4th Election District - 3rd Councilmanic District  
Mark S. Blank, et ux - Petitioners  
Case No. 89-554-SPHA

Dear Commissioner Haines:

Please note an appeal on behalf of the Petitioners of the decision on the Petition for Zoning Variance only, in the above-captioned matter as determined in the decision dated October 25, 1989. (This Appeal is not of the decision with respect to the Special Hearing.)

Find enclosed our check payable to Baltimore County in the amount of One Hundred and Fifty Dollars (\$150.00) as payment of the appeal fee and assignment fee. Please forward the file and all requisite papers to the Board of Appeals.

Thanking you in advance for your courtesies, should there be any difficulty with this request or should I need be of any assistance to you, do not hesitate to call.

Very truly yours,

*Stuart D. Kaplow*  
Stuart D. Kaplow

SDK:cc

cc: People's Counsel Board of Appeals 61-6 17 12 AONED

RECEIVED  
COUNTY BOARD OF APPEALS  
NOV 28 4 19 89



**CERTIFICATE OF POSTING**  
ZONING DEPARTMENT OF BALTIMORE COUNTY  
Towson, Maryland

89-554-SPHA

District: 4th  
Posted for: Appeal  
Postdate: 12-5-89  
Location of property: NE corner of Reisterstown Road, 103.34' ft  
N.W. of Austin Road (11719 Reisterstown Road)  
Location of Sign: 11719 Reisterstown Road  
Remarks: 12-5-89  
Signed by: [Signature]  
Number of Signs: 7

**BALTIMORE COUNTY, MARYLAND**

**INTER-OFFICE CORRESPONDENCE**

TO: Zoning Advisory Committee  
S/o Carl Richards  
Date: May 11, 1989  
FROM: Robert W. Bowling, P.E.  
SUBJECT: (Blank Property)  
PROPERTY OWNER: Mark S. Blank, et ux  
LOCATION: NE/S Reisterstown Rd., 103.34' NW of centerline of Austin Rd.  
DISTRICT: 4th Election District

The Zoning Plan for the subject item has been reviewed by the Developers Engineering Division and we comment as follows:

**GENERAL COMMENTS:**

All improvements, intersections, entrances, drainage requirements and construction affecting a State Road right-of-way are subject to the Standards, specifications and approval of the Maryland State Highway Administration in addition to those of Baltimore County.

In accordance with Bill No. 56-82, dredging, filling or construction in any wetland is prohibited.

The Developer shall be responsible for damages to the County's facilities, such as water meters, manholes, curbs and gutters and inlets within his subdivision. Occupancy Permits will be withheld until such damages have been corrected.

The Developer's Engineer shall investigate the need and obtain the necessary permits for the facilities serving this site that may require a "Corps of Engineer's Permit", a "Water Resources Permit", a "Water Quality Certification", and any other Federal or State Permits. These facilities cannot be sent to contract until such permits have been received.

**STORM DRAINS AND SEDIMENT CONTROL COMMENTS:**

The Developer is responsible for the total actual cost of drainage facilities required to carry the storm water run-off through the property to be developed to a suitable outfall. The Developer's cost responsibilities include the acquiring of easements and rights-of-way - both onsite and offsite - and the deeding in fee of said rights-of-way to the County. Preparation of all construction, rights-of-way and easement drawings, engineering and surveys, and payment of all actual construction costs including the County overhead both within and outside the development, are also the responsibilities of the Developer.

Blank Property  
Page 2  
May 11, 1989

**STORM DRAINS AND SEDIMENT CONTROL COMMENTS: (Con't)**

Onsite drainage facilities serving only areas within the site are considered private. Therefore, construction and maintenance shall be the Developer's responsibility. However, a drainage area map, scale 1" = 200', including all facilities and drainage areas involved, shall be shown on a plan and submitted to Baltimore County for review.

The Developer must provide necessary drainage facilities (temporary or permanent) to prevent creating any nuisances or damages to adjacent properties, especially by the concentration of surface waters. Correction of any problem which may result, due to improper grading or improper installation of drainage facilities, would be the full responsibility of the Developer.

Development of this property through stripping, grading and stabilization could result in a sediment pollution problem, damaging private and public holdings downstream of the property. A grading permit is, therefore, necessary for all grading, including the stripping of top soil.

**WATER AND SANITARY SEWER COMMENTS:**

Permission to obtain a metered connection from the existing main may be obtained from the Department of Permits and Licenses.

The Developer is responsible for the cost of capping or plugging any existing house connection not used to serve the proposed site.

The Developer will be given credit for one System Connection Charge for each existing house which is now connected into the public services.

Permission to connect to, or to connect additional sanitary fixtures to the existing public sanitary sewer may be obtained from the Department of Permits and Licenses.

The total Water and/or Sanitary Sewer System Connection Charge is determined, and payable, upon application for the Plumbing Permit. This Charge is in addition to the normal front foot assessment and permit charges.

This property is subject to Water and/or Sewer System Connection Charges based on the size of water meters utilized in accordance with current County policy.

SIGNED: ROBERT W. BOWLING

Robert W. Bowling, P.E., Chief  
Developers Engineering Division

RWB:pab

cc: File

BLANK/TXTCOMM2

**BALTIMORE COUNTY, MARYLAND**  
**INTER-OFFICE CORRESPONDENCE**

TO: J. Robert Haines  
Zoning Commissioner  
DATE: July 17, 1989  
FROM: Pat Keller, Deputy Director  
Office of Planning and Zoning  
SUBJECT: ZONING ADVISORY COMMITTEE COMMENTS

Case No. 89-554-SPHA  
Item No. 438

Re: Mark S. Blank, et ux

The Petitioners request a variance to allow 100% of the adjusted gross floor area to be occupied by dental (medical) offices in lieu of the permitted 25% and a special hearing to determine if such a variance may be granted. In reference to this request, staff offers the following comments:

A waiver from CRG meeting and CRG Plan was granted by the Planning Board on April 14, 1989 (W-89-85).

This office is generally opposed to allowing more than the permitted 25% medical office use in R.O zoned building, however, it realizes the limitation created by not allowing conversion of individual dwellings for use by medical practitioners.

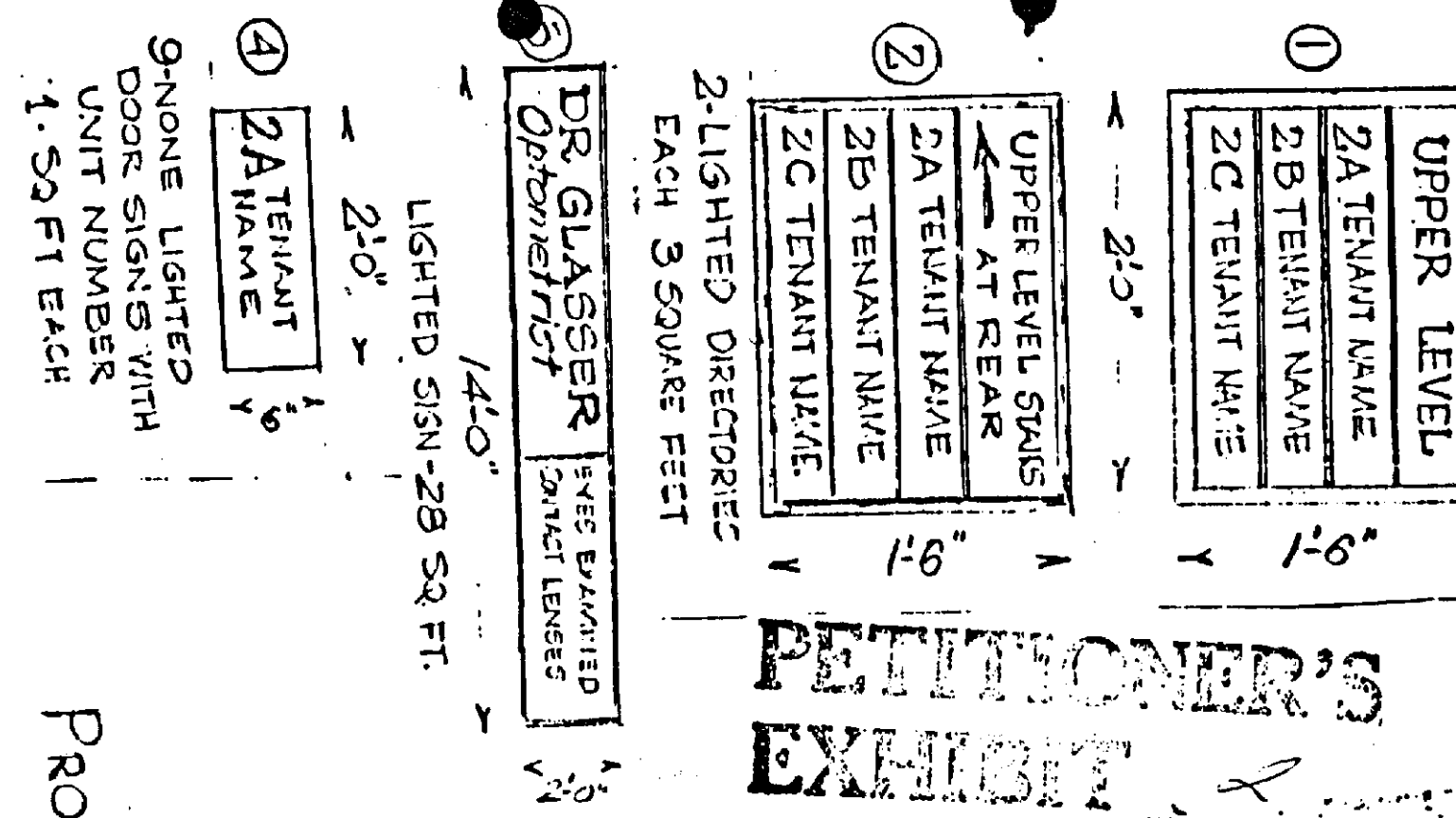
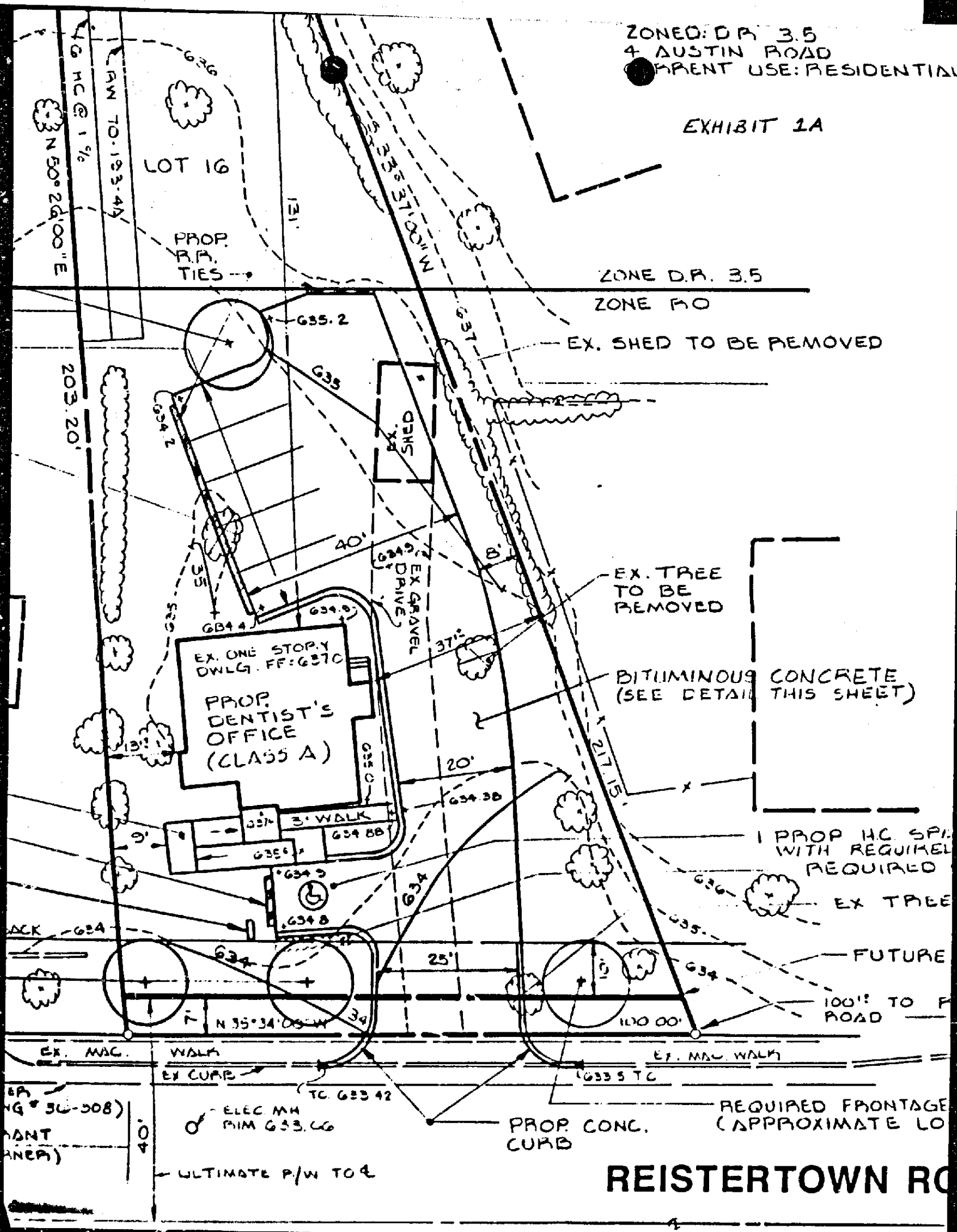
In order that they may be compatible with surrounding residential properties, the medical office should be restricted in the number of professional and non-professional employees.

Staff recommends that:

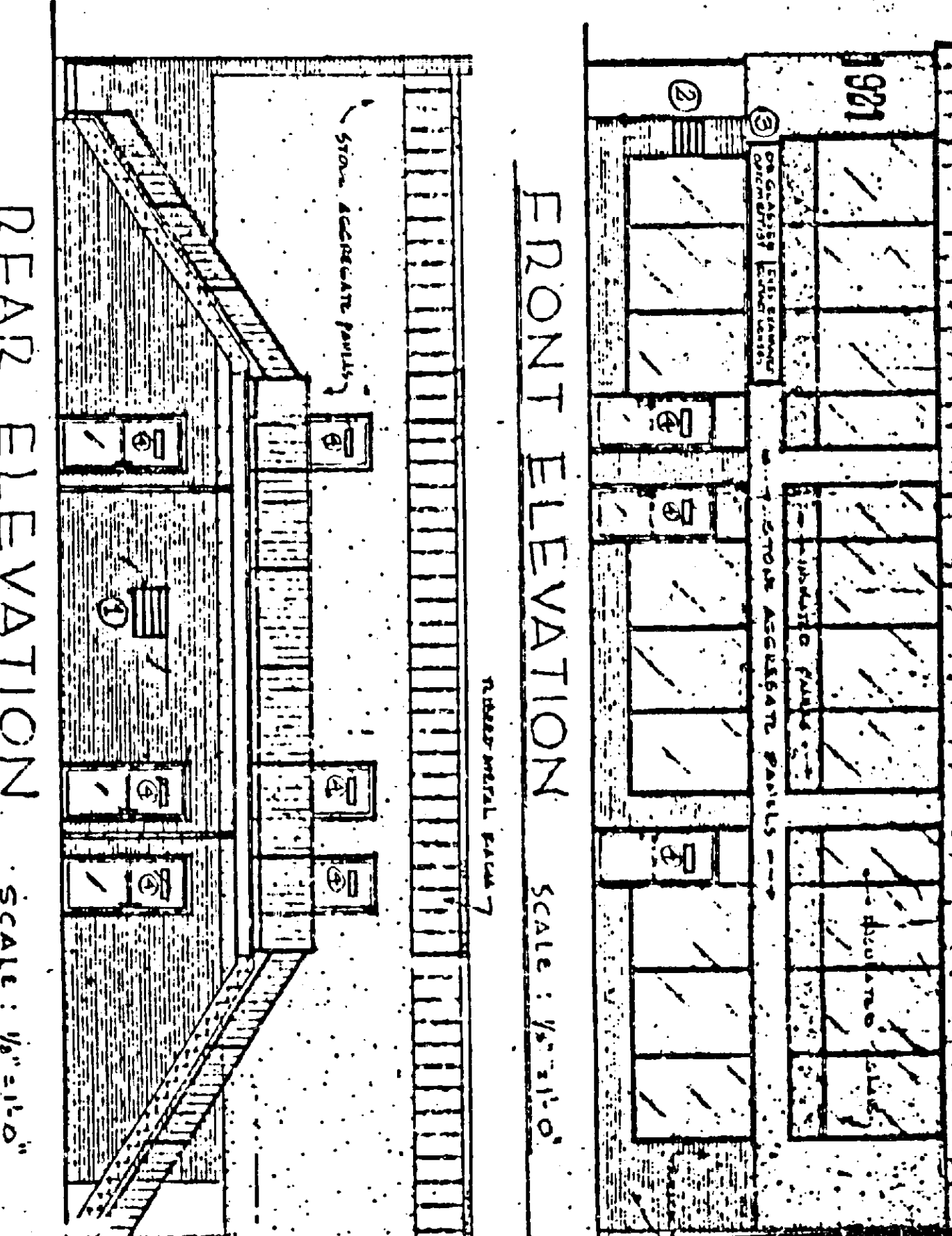
1. the number of dentists having office hours be limited to 1 professional dentist with requisite support staffing and
2. no office visit should exceed 2 hours in length; and
3. the D.R.3.5 portion of the property should be landscaped and maintained as a residential lot; and
4. this parcel is located within a planned commercial corridor 'study area, at the time of building permit approval a streetscape program should be reviewed by the Office of Planning and Zoning.

A:71389.txt Pg.2

**RECEIVED**  
JUL 17 1989  
**ZONING OFFICE**



PROPOSED SIGNS - G+G BUILDING - 1921 YORK RD 8TH DISTRICT



**BALTIMORE COUNTY, MARYLAND**

**INTER-OFFICE CORRESPONDENCE**

REC'D CO. CHIEF  
TO: Charles W. Williams, P. Evans  
DATE: June 20, 1989  
FROM: Arnold Johnson

SUBJECT: Medical Offices in R-7 Zone

It is my opinion that a request for a variance to the 25% limitation could be made and that it would be treated as an area variance and not as a use variance. This conclusion is founded on various appellate decisions rendered by the Maryland Courts as well as by the Baltimore County Board of Appeals.

\* Further substantiation by the Zoning Commissioner would be recommended.

42/est

**PETITIONER'S EXHIBIT 1**

**LAW OFFICES**  
**FRANK, BERNSTEIN, CONAWAY & GOLDMAN**  
10227 WINDSOR CIRCLE  
COLUMBIA, MARYLAND 21044  
(301) 300-8477  
7700 LEECHBURG PIKE  
TYSONS CORNER, VIRGINIA 22043  
(703) 893-4670  
300 EAST LOMBARD STREET  
BALTIMORE, MARYLAND 21202  
(301) 625-3500  
(301) 558-9676  
TELETYPE: (301) 625-3702  
CABLE: FRANKON  
TELEX: 87830  
118 WEST CHURCH STREET  
FREDERICK, MARYLAND 21701  
(301) 663-9338  
6701 DEMOCRACY BOULEVARD  
BETHESDA, MARYLAND 20817  
(301) 897-0288  
WRITER'S DIRECT NUMBER  
(202) 697-3775

November 20, 1989

J. Robert Haines, Zoning Commissioner  
Office of Planning and Zoning  
111 W. Chesapeake Avenue  
Towson, MD 21204

Re: PETITION FOR ZONING VARIANCE  
NE/S Reisterstown Road, 103.34' NW of the c/l of Austin Road (11719 Reisterstown Road)  
4th Election District - 3rd Councilmanic District  
Mark S. Blank, et ux - Petitioners  
Case No. 89-554-SPHA

Dear Commissioner Haines:

Please note an appeal on behalf of the Petitioners of the decision on the Petition for Zoning Variance only, in the above-captioned matter as determined in the decision dated October 25, 1989. (This Appeal is not of the decision with respect to the Special Hearing.)

Find enclosed our check payable to Baltimore County in the amount of One Hundred and Fifty Dollars (\$150.00) as payment of the appeal fee and assignment fee. Please forward the file and all requisite papers to the Board of Appeals.

Thanking you in advance for your courtesies, should there be any difficulty with this request or should I need be of any assistance to you, do not hesitate to call.

Very truly yours,

Robert D. Kaplow

SDK:cc

cc: People's Counsel  
Board of Appeals

**RECEIVED NOV 21 1989**

**Baltimore County**  
Zoning Commissioner  
County Office Building  
111 West Chesapeake Avenue  
Towson, Maryland 21204

Account: R001-6150  
Number

**receipt**  
No 407

Date

DESCRIPTION	QTY	PRICE
OFFICIAL FEES		
150 - OFF ALL OTHER ORDERS	1	\$125.00
150 - POSTING SIGNS - APPROX 150' X 1'	1	\$25.00
TOTAL:		\$150.00

Cashier Validation: Please make checks payable to Baltimore County



Baltimore County  
Zoning Commissioner  
Office of Planning & Zoning  
Towson, Maryland 21204  
(301) 887-3333  
J. Robert Haines  
Zoning Commissioner

November 16, 1989



Dennis F. Rasmussen  
County Executive

Stuart D. Kaplow, Esquire  
Frank, Bernstein, Conway & Goldman  
300 E. Lombard Street  
Baltimore, Maryland 21202

RE: PETITIONS FOR SPECIAL HEARING AND ZONING VARIANCE  
NE/S Reisterstown Road, 103.34' NW of the c/l of Austin Road  
(11719 Reisterstown Road)  
4th Election District - 3rd Councilmanic District  
Mark S. Blank, et ux - Petitioners  
Case No. 89-554-SPHA

Dear Mr. Kaplow:

In response to your letter dated November 13, 1989 concerning the above-captioned matter, the following comments are offered.

Regardless of whether or not the Office of Planning is acceptable to certain restrictions with respect to staffing and hours of operation of the proposed medical office on the subject site, the operation of the proposed medical office in my opinion and opinion issued October 25, 1989 remains appropriate in my opinion and will not be modified. In the event you are unhappy with this decision, you are free to file an appeal on behalf of your client.

Very truly yours,

J. Robert Haines  
Zoning Commissioner  
for Baltimore County

JRH:bjs

cc: Case File

LAW OFFICES  
FRANK, BERNSTEIN, CONAWAY & GOLDMAN

10227 WINCOPH CIRCLE  
COLUMBIA, MARYLAND 21046  
(301) 732-8477  
7799 LEESBURG PIKE  
TYSONS CORNER, VIRGINIA 22043  
(703) 833-4870

300 EAST LOMBARD STREET  
BALTIMORE, MARYLAND 21202  
(301) 825-3500  
(703) 856-9676  
TELEPHONE: (301) 825-3702  
CABLE: FRANKSGO  
TELEX: 979329

18 WEST CHURCH STREET  
FREDERICK, MARYLAND 21701  
(301) 843-8335  
6701 DEMOCRACY BOULEVARD  
BETHESDA, MARYLAND 20817  
(301) 887-8888

WRITER'S DIRECT NUMBER  
(301) 825-3775

November 13, 1989

J. Robert Haines, Zoning Commissioner  
Office of Planning & Zoning  
111 W. Chesapeake Avenue  
Towson, MD 21204

Re: Mark S. Blank, et ux  
Case No. 89-554-SPHA

Dear Commissioner Haines:

By this letter, I would kindly request that you please reconsider the decision of October 25, 1989 in the above-captioned matter. Specifically, I would ask on behalf of my clients, Dr. and Mrs. Mark S. Blank, that you modify the restrictions which are conditions precedent to the relief granted.

We would request:

1. That enumerated condition 2 be modified such that one (1) dentist, a chair side assistant, a hygienist and secretary be permitted to operate on the site. The nature of modern dentistry is such that most dentists are assisted chair side and a hygienist performs routine cleaning operations. A secretary is required in the waiting area as with any professional office.
2. That the hours of operation be altered such that office hours in the early evening be permitted. Dr. Blank's existing office in Laurel regularly schedules each last appointment at 8:30 p.m. and with so many of his clients requesting evening hours, such is a practical necessity.
3. That enumerated paragraph 9 be altered to correspond with the hours of operation noted above.

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NOV 14 1989  
ZONING OFFICE

FRANK, BERNSTEIN, CONAWAY & GOLDMAN

J. Robert Haines, Zoning Commissioner  
November 13, 1989  
Page 2

I would kindly request an opportunity to speak with you about these requested alterations and modifications to your decision.

Unfortunately, while I might feel that we have prevailed and won the battle in obtaining a favorable decision, I have lost the war for my client. Dr. Blank indicates to me that due to the restrictions in staffing and hours of operation, it is not practicable for him to operate out of the site in accordance with your decision. As you may be aware, discussions were held with the Office of Planning and Zoning and Dr. Blank had agreed to certain restrictions with respect to staffing. Possible the understanding reached with OPZ could be the basis for any authorization of the restrictions.

Thanking you in advance for all of your courtesies in this matter, I will telephone your office during the coming days.

Very truly yours,

Stuart D. Kaplow

SDK:cc

cc: People's Counsel

LAW OFFICES  
FRANK, BERNSTEIN, CONAWAY & GOLDMAN

10227 WINCOPH CIRCLE  
COLUMBIA, MARYLAND 21046  
(301) 732-8477  
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18 WEST CHURCH STREET  
FREDERICK, MARYLAND 21701  
(301) 843-8335  
6701 DEMOCRACY BOULEVARD  
BETHESDA, MARYLAND 20817  
(301) 887-8888

WRITER'S DIRECT NUMBER  
(301) 825-3775

July 24, 1989

HAND-DELIVERY

J. Robert Haines, Zoning Commissioner  
County Office Building, First Floor  
111 W. Chesapeake Avenue  
Towson, MD 21204

Re: Mark S. Blank, et ux.  
89-554-SPHA

Dear Commissioner Haines:

Please find enclosed the Petitioner's Memorandum as requested by you when this matter was heard on July 13, 1989.

As noted on the Certificate of Service, a copy of the Memorandum has been provided to Phyllis C. Friedman, People's Counsel. Ms. Friedman indicated that she was not certain, at the time of the hearing, whether or not she would file a responsive memorandum, however, in the interest of timeliness, I would kindly request that, should she so desire, she be directed to file her response within ten (10) days. As you will recall, the Petitioner's Memorandum was prepared within that time frame and as my client is a small business man, any delay in a determination of this matter, causes him hardship.

Thanking you for all of your courtesies, should I need be of any assistance to you, of course, do not hesitate to give me a call.

Very truly yours,  
Stuart D. Kaplow

SDK:cc

Enclosure

cc: Ms. Phyllis C. Friedman

Baltimore County  
Zoning Commissioner  
Office of Planning & Zoning  
Towson, Maryland 21204  
(301) 887-3333  
J. Robert Haines  
Zoning Commissioner

October 25, 1989



Dennis F. Rasmussen  
County Executive

Stuart D. Kaplow, Esquire  
300 E. Lombard Street, Suite 1700  
Baltimore, Maryland 21202

RE: PETITIONS FOR SPECIAL HEARING AND ZONING VARIANCE  
NE/S Reisterstown Road, 103.34' NW of the c/l of Austin Road  
(11719 Reisterstown Road)  
4th Election District - 3rd Councilmanic District  
Mark S. Blank, et ux - Petitioners  
Case No. 89-554-SPHA

Dear Mr. Kaplow:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petitions for Special Hearing and Zoning Variance have been granted in accordance with the attached order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact Ms. Charlotte Radcliffe at 887-3391.

Very truly yours,

J. Robert Haines  
Zoning Commissioner  
for Baltimore County

JRH:bjs

cc: People's Counsel

File

### CERTIFICATE OF PUBLICATION

TOWSON, MD., June 23, 1989

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper published in Towson, Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on June 22, 1989.

THE JEFFERSONIAN.

S. Zake Orlan  
Publisher

PO13596  
reg #30963  
co 89-554-SPHA  
price \$47.28

NOTICE OF HEARING  
The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing on the property identified herein in Room 100 of the County Office Building, located at 111 W. Chesapeake Avenue in Towson, Maryland 21204 as follows:

Petition for Special Hearing and Zoning Variance: Case No. 89-554-SPHA, NE/S Reisterstown Road, 103.34' NW of c/l of Austin Road, 11719 Reisterstown Road, 4th Election District, 3rd Councilmanic District, Petitioner(s): Mark S. Blank, et ux, Hearing Date: Thursday, July 13, 1989 at 11:30 a.m.

Special Hearing: May grant a Variance from the area regulations of Section 202.3 A.2 permitting no more than 25% of the total additional gross floor area of an office building located in an R-1 zone to be occupied by medical offices. Variance: to permit 100% of the additional gross floor area of the building to be occupied by medical offices in lieu of the permitted 25%. In the event that the Petition is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commission will, however, reserve the right to suspend the appeal period for a period of 60 days if the Petitioner fails to appear at the hearing. Such request must be in writing and received in the office by the date of the hearing set above or presented at the hearing. J. ROBERT HAINES, Zoning Commissioner of Baltimore County, 6048 June 22.

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Petition for Special Hearing and Zoning Variance: Case No. 89-554-SPHA, NE/S Reisterstown Road, 103.34' NW of c/l of Austin Road, 11719 Reisterstown Road, 4th Election District, 3rd Councilmanic District, Petitioner(s): Mark S. Blank, et ux, Hearing Date: Thursday, July 13, 1989 at 11:30 a.m.

Special Hearing: May grant a Variance from the area regulations of Section 202.3 A.2 permitting no more than 25% of the total additional gross floor area of an office building located in an R-1 zone to be occupied by medical offices. Variance: to permit 100% of the additional gross floor area of the building to be occupied by medical offices in lieu of the permitted 25%. In the event that the Petition is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commission will, however, reserve the right to suspend the appeal period for a period of 60 days if the Petitioner fails to appear at the hearing. Such request must be in writing and received in the office by the date of the hearing set above or presented at the hearing. J. ROBERT HAINES, Zoning Commissioner of Baltimore County, 6048 June 22.

breast augmentations they performed. Academy President Dr. Richard Galee attributed the increase to the public's heightened awareness of the benefits of cosmetic surgery. In addition, he said, "I believe it is also a matter of people wanting to improve their appearance. Most people are now educated enough to know that there are options available which are safe and effective." Academy member Dr. Thomas Alt noted that the advent of cosmetic surgery financing may also be a contributing factor in the escalation of numbers. "Many tending institutions and some cosmetic surgeons now offer financing for cosmetic surgery, making it more affordable for the average patient," Dr. Alt stated.

One Academy source cited the fashion industry's promotion of the "fader figure" as the primary reason behind last year's 11.5% increase in breast augmentations, elevating it to the second most popular performed procedure.

The number one procedure in 1988 was rhinoplasty, or "nose job." There were an estimated 348,000 of these procedures performed, a 5% climb from 1987's figure of 325,000.

Still in demand, but with slightly decreased frequency

Line: 1-800-221-9808 or write: American Academy of Cosmetic Surgery, 159 East Live Oak Ave., #204, Arcadia, CA, 91006.

Auditions  
Directors, Actors and Musicians are needed to fill paying positions for local productions. Workshops and Teaching in after school programs for Baltimore City School programs. Cultural Arts Institute Inc. 439-ARTS. Auditions by appointment only.

LEGAL NOTICE  
The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing on the property identified herein in Room 100 of the County Office Building, located at 111 W. Chesapeake Avenue in Towson, Maryland 21204 as follows:

Petition for Special Hearing and Zoning Variance: Case No. 89-554-SPHA, NE/S Reisterstown Road, 103.34' NW of c/l of Austin Road, 11719 Reisterstown Road, 4th Election District, 3rd Councilmanic District, Petitioner(s): Mark S. Blank, et ux, Hearing Date: Thursday, July 13, 1989 at 11:30 a.m.

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Canada  
\$23.99  
Coffins  
Caskets  
Pelland  
Perch Sets  
25% off

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THE NORTHWEST STAR

manager J. Sule

Cost of Advertisement

### CERTIFICATE OF POSTING

ZONING DEPARTMENT OF BALTIMORE COUNTY  
Towson, Maryland

District: 4th  
Posted for: Special Hearing and Variance  
Petitioner: Mark S. Blank, et ux  
Location of property: NE/S Reisterstown Road, 103.34' NW of c/l of Austin Road, 11719 Reisterstown Road  
Location of Sign: In front of 11719 Reisterstown Road  
Remarks: J. S. Anata  
Posted by: J. S. Anata  
Number of Signs: 2  
Date of Posting: June 21, 1989  
Date of return: June 23, 1989

Baltimore County  
Zoning Commissioner  
Office of Planning & Zoning  
Towson, Maryland 21204  
(301) 887-3333  
J. Robert Haines  
Zoning Commissioner

Date: 7/7/89

Mr. Mark S. Blank  
4012 Longlake Drive  
Gutwies Mills, Maryland 21117

Re: Petitions for Special Hearing and Zoning Variance  
CASE NUMBER: 89-554-SPHA  
NE/S Reisterstown Road, 103.34' NW of c/l of Austin Road  
11719 Reisterstown Road  
4th Election District - 3rd Councilmanic  
Petitioner(s): Mark S. Blank, et ux  
HEARING SCHEDULED: THURSDAY, JULY 13, 1989 at 11:30 a.m.

Dear Petitioner(s):

Please be advised that \$ 89.28 is due for advertising and posting of the above referenced property. All fees must be paid prior to the hearing. Do not remove the sign and post set(s) from the time it is posted by this office until the day of the hearing.

THIS FEE MUST BE PAID AND THE ZONING SIGN & POST SET(S) RETURNED ON THE DAY OF THE HEARING OR THE ORDER SHALL NOT BE ISSUED.

Please make your check payable to Baltimore County, Maryland and bring it along with the sign and post set(s) to the Zoning Office, County Office Building, Room 111, Towson, Maryland 21204 fifteen (15) minutes before your hearing is scheduled to begin.

Please note that should you fail to return the sign & post set(s), there will be an additional \$25.00 added to the above fee for each set not returned.

Very truly yours,

J. Robert Haines  
Zoning Commissioner of  
Baltimore County

cc: Stuart D. Kaplow, Esq.



RE: PETITION FOR SPECIAL HEARING : BEFORE THE ZONING COMMISSIONER  
PETITION FOR VARIANCE : OF BALTIMORE COUNTY  
NE/S Reisterstown Rd., 103.34' :  
NW of C/L of Austin Rd. (11719 :  
Reisterstown Rd.), 4th Election :  
Dist.: 3rd Councilmanic Dist. :  
Case No. 89-554-SPHA

MARK S. BLANK, et ux,  
Petitioners

ENTRY OF APPEARANCE

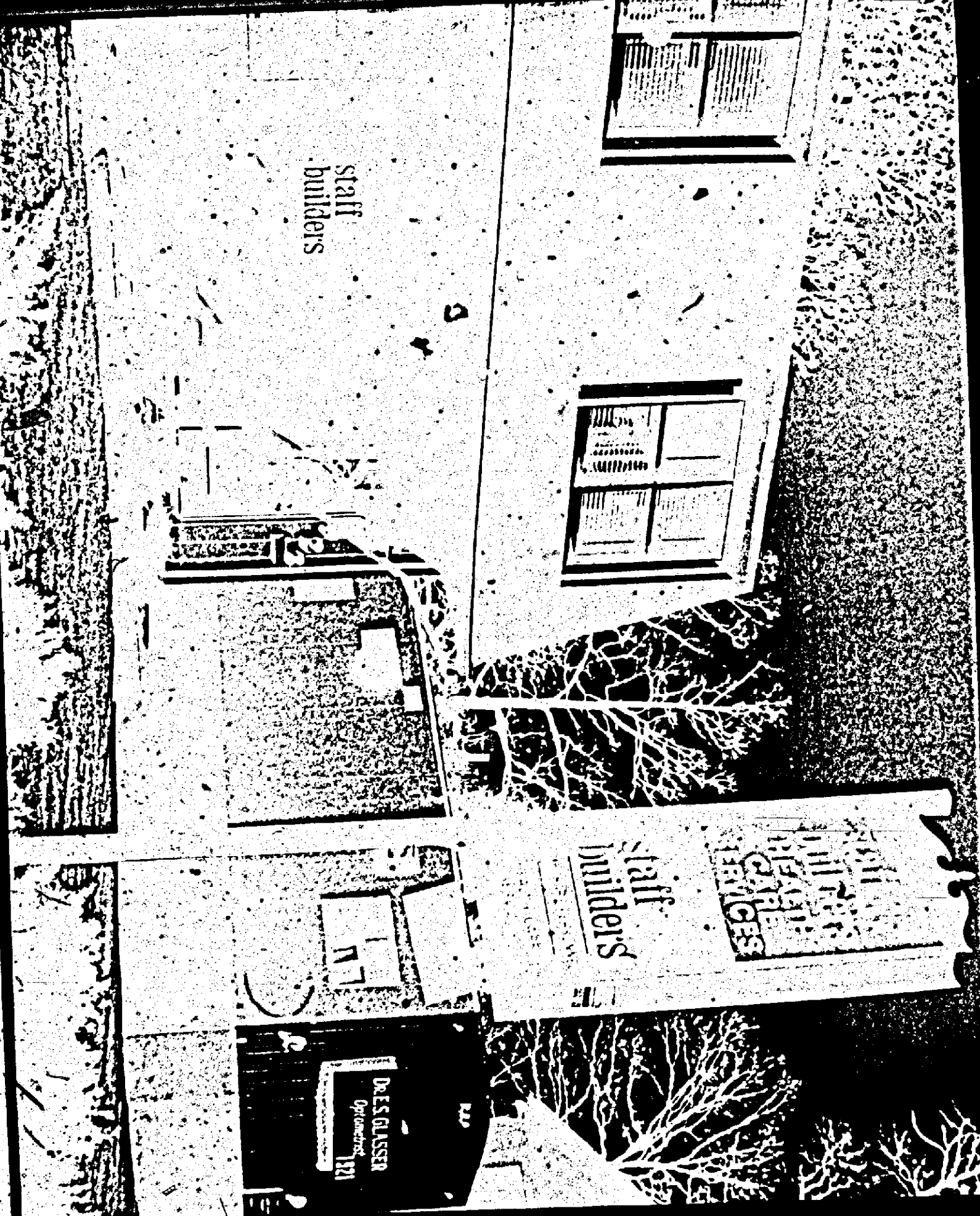
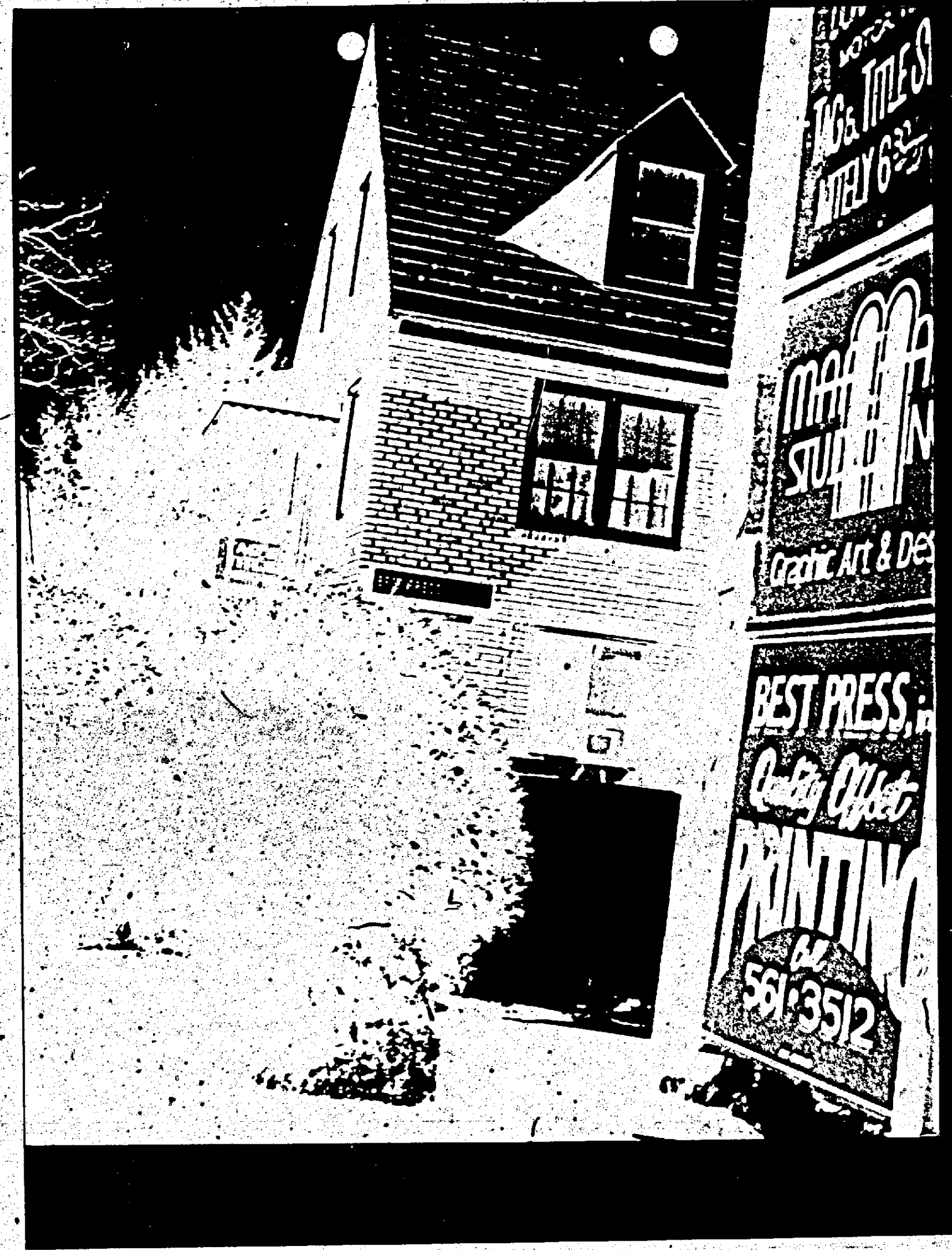
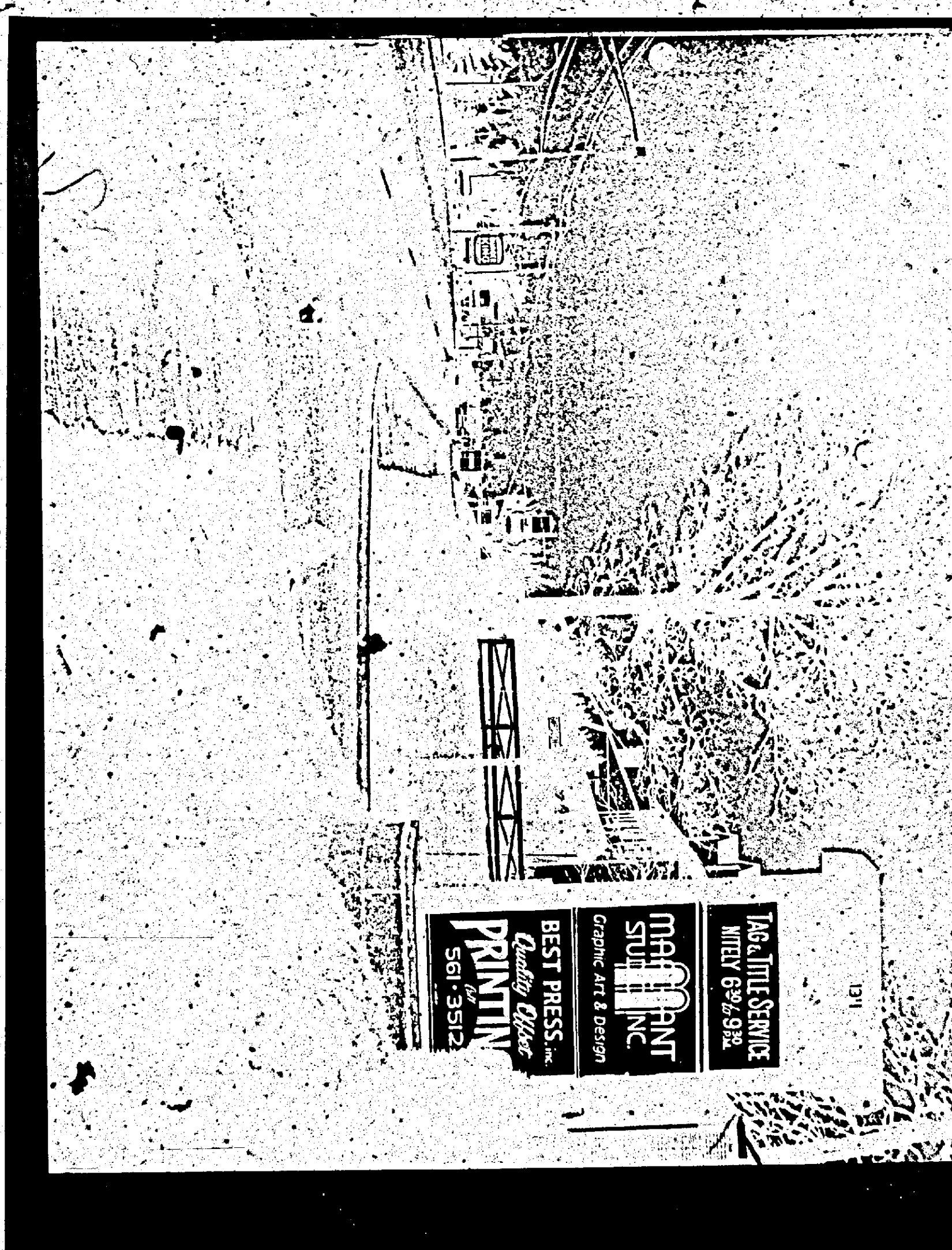
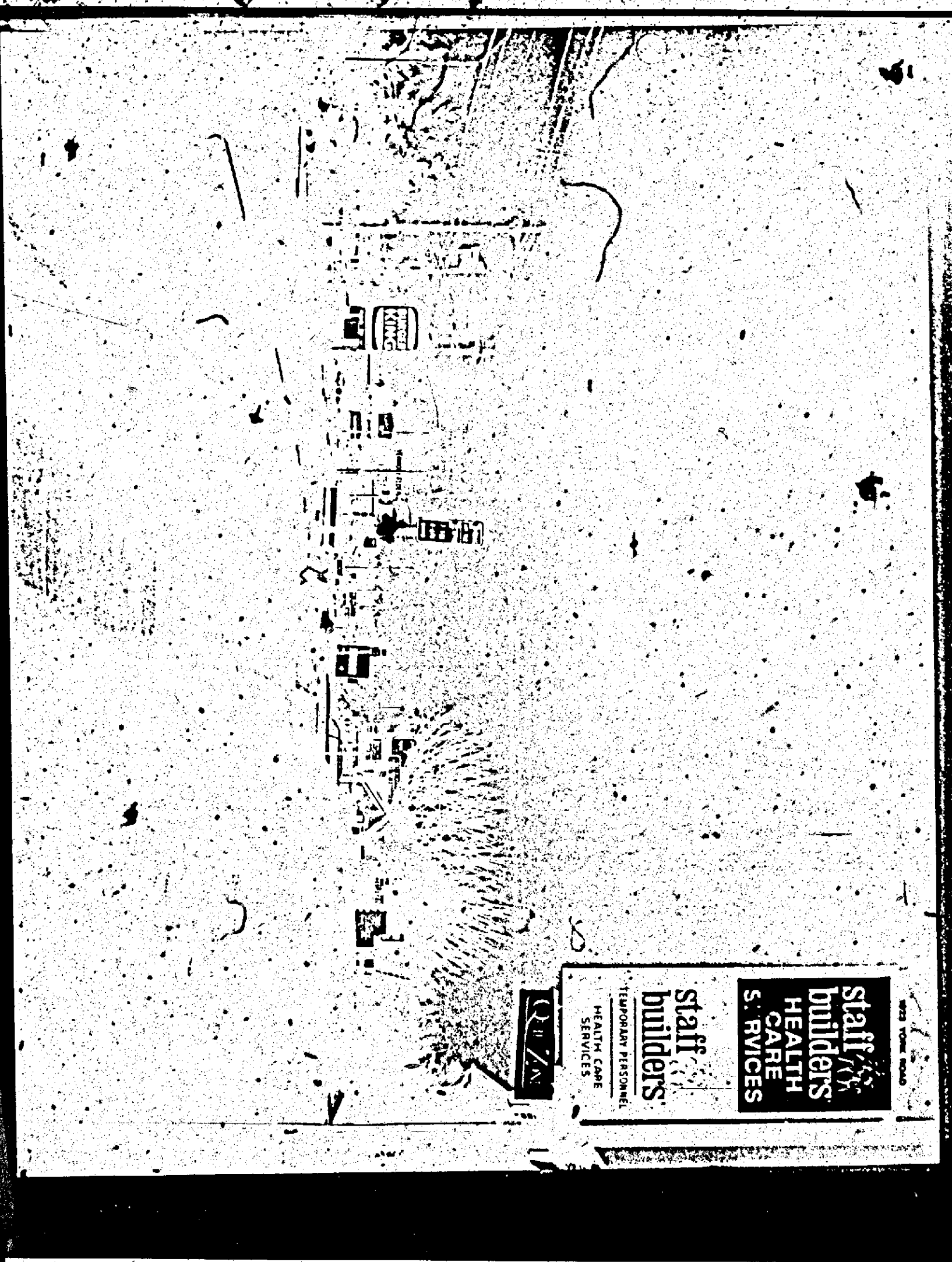
Please enter the appearance of the People's Counsel in the above-captioned matter. Notices should be sent of any hearing dates or other proceedings in this matter and of the passage of any preliminary or final Order.

*Phyllis Cole Friedman*  
Phyllis Cole Friedman  
People's Counsel for Baltimore County

*Peter Max Zimmerman*  
Peter Max Zimmerman  
Deputy People's Counsel  
Room 304, County Office Building  
Towson, Maryland 21204  
687-2188

I HEREBY CERTIFY that on this 30th day of June, 1989, a copy of the foregoing Entry of Appearance was mailed to Stuart D. Kaplow, Esquire, Suite 1700, 300 E. Lombard St., Baltimore, MD 21202, Attorney for Petitioners.

*Peter Max Zimmerman*  
Peter Max Zimmerman



300 Neb. 137 NORTH WESTERN REPORTER, 2d SERIES  
370 Neb. 104  
ALUMNI CONTROL BOARD, ALPHA PHI CHAPTER, DELTA SIGMA PHI FRATERNITY, INC., Appellant,  
v.  
CITY OF LINCOLN, a municipal corporation, Appellee.  
No. 35948.  
Supreme Court of Nebraska.  
Oct. 29, 1965.

Zoning variance case. The District Court, Lancaster County, Boyles, J., denied variance, and the plaintiff appealed. The Supreme Court, in *Cowen, J.*, held that evidence disclosed no such practical difficulty as would justify such variance in front, rear and side yard requirements of zoning provisions as would permit construction of 48 men instead of the 35 men who could be accommodated in a house which could be built within the zoning requirements.

Affirmed.

1. Zoning Q-401  
"Use variances" are customarily construed with hardship while "area variances" are customarily concerned with practical difficulty; a "use variance" is one which permits a use other than that prescribed by zoning ordinance in a particular district; an "area variance" has no relationship to a change of use and is primarily a grant to permit use in a manner other than that prescribed by restrictions of zoning ordinance.

2. Zoning Q-403  
The disposition of case involving an area variance and "practical difficulty" under a zoning ordinance depends on the facts and circumstances of each particular case.

3. Zoning Q-505  
Criteria generally and properly before board of appeals on application for variance applied for would give substantial relief to applicant and do justice to other property owners; and (3) whether spirit of ordinance will be observed and public safety and welfare secured by grant of relief.

4. Zoning Q-538  
Evidence disclosed no such practical difficulty as would justify such variance in front, rear and side yard requirements of zoning provisions as would permit construction of fraternity house large enough to accommodate 48 men instead of the 35 men who could be accommodated in a house which could be built within the zoning requirements.

5. Zoning Q-610, 612, 621  
The acts of a board of zoning appeals are subject to review and reversal only if they constitute an abuse of discretion and are unreasonable, arbitrary or illegal.

6. Zoning Q-612  
The refusal to grant variance in off-street parking requirements for fraternity house was not unreasonable, nor arbitrary, where zoning requirement was that off-street parking be within 1200 feet and variance requested was an additional 80 feet and this total distance was so great that the off-street parking could not be reasonably or effectively used.

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BALTIMORE COUNTY, MARYLAND  
INTER-OFFICE CORRESPONDENCE

TO: J. Robert Haines  
Zoning Commissioner  
DATE: July 17, 1989  
FROM: Pat Keller, Deputy Director  
Office of Planning and Zoning  
SUBJECT: ZONING ADVISORY COMMITTEE COMMENTS

Case No. 89-554-SPHA  
Item No. 438  
Re: Mark S. Blank, et ux  
The Petitioners request a variance to allow 100% of the adjusted gross floor area to be occupied by dental (medical) offices in lieu of the permitted 25% and a special hearing to determine if such a variance may be granted. In reference to this request, staff offers the following comments:

A waiver from CRC meeting and CRC Plan was granted by the Planning Board on April 14, 1989 (w-87-32).

This office is generally opposed to allowing more than the permitted 25% medical office use in R.O zoned building, however, it realizes the limitation created by not allowing conversion of individual dwellings for use by medical practitioners.

In order that they may be compatible with surrounding residential properties, the medical office should be restricted in the number of professional and non-professional employees.

Staff recommends that

1. the number of dentists having office hours be limited to 1 professional dentist with requisite support staffing and no office visit should exceed 2 hours in length; and
2. the D.R.3.5 portion of the property should be landscaped and maintained as a residential lot; and
3. this parcel is located within a planned commercial corridor study area, at the time of building permit approval a streetscape program should be reviewed by the Office of Planning and Zoning.

A:71389.txt Pg.2

RECEIVED  
JUL 17 1989  
ZONING OFFICE

BALTIMORE COUNTY, MARYLAND  
INTER-OFFICE CORRESPONDENCE

Zoning Advisory Committee  
c/o Carl Richards  
Date: May 11, 1989  
FROM: Robert W. Bowling, P.E.  
SUBJECT: Item #438 (Blank Property)  
PROPERTY OWNER: Mark S. Blank, et ux  
LOCATION: NE/S Reisterstown Rd., 103.34' NW of centerline of Austin Rd.  
DISTRICT: 4th Election District

The Zoning Plan for the subject item has been reviewed by the Developers Engineering Division and we comment as follows:

GENERAL COMMENTS:  
All improvements, intersections, entrances, drainage requirements and construction affecting a State Road right-of-way are subject to the Standards, specifications and approval of the Maryland State Highway Administration in addition to those of Baltimore County.

In accordance with Bill No. 56-82, dredging, filling or construction in any wetland is prohibited.

The Developer shall be responsible for damages to the County's facilities, such as water meters, manholes, curbs and gutters and inlets within his subdivision. Occupancy Permits will be withheld until such damages have been corrected.

The Developer's Engineer shall investigate the need and obtain the necessary permits for the facilities serving this site that may require a "Corps of Engineer's Permit", a "Water Resources Permit", a "Water Quality Certification", and any other Federal or State Permits. These facilities cannot be sent to contract until such permits have been received.

STORM DRAINAGE AND SEDIMENT CONTROL COMMENTS:

The Developer is responsible for the total actual cost of drainage facilities required to carry the storm water run-off through the property to be developed to a suitable outfall. The Developer's cost responsibilities include the acquiring of easements and rights-of-way - both onsite and offsite - and the design in fee of said rights-of-way to the County. Preparation of all construction, rights-of-way and easement drawings, engineering and surveys, and payment of all actual construction costs including the County overhead both within and outside the development, are also the responsibilities of the Developer.

CPS-008

89-554-SPHA

BALTIMORE COUNTY OFFICE OF PLANNING & ZONING

County Office Building  
111 W. Chesapeake Avenue  
Towson, Maryland 21204

Your petition has been received and accepted for filing this  
26th day of April, 1989.

*J. Robert Haines*  
J. ROBERT HAINES  
ZONING COMMISSIONER

Petitioner: Mark S. Blank, et ux Received by: James E. Dyer  
Petitioner's Attorney: Stuart D. Kaplow, Esquire Chairman, Zoning Plans Advisory Committee